



Senate Committee On
CHILDREN AND FAMILIES

Evelyn J. Lynn, Chair
Frederica S. Wilson, Vice Chair

Meeting Packet

Tuesday, April 13, 2004
2:45 p.m. – 4:45 p.m.
37 Senate Office Building

***(Please bring this packet to the committee meeting.
Duplicate materials will not be available.)***

E X P A N D E D A G E N D A

COMMITTEE ON CHILDREN AND FAMILIES

Senator Lynn, CHAIR
Senator Wilson, VICE-CHAIR

DATE: Tuesday, April 13, 2004
TIME: 2:45 p.m. -- 4:45 p.m.
PLACE: Room 37 (LL), Senate Office Building

(MEMBERS: Senators Dawson, Garcia, Haridopolos, Peaden, Sebesta, Smith and Webster)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 2688 Campbell (Similar H 1327)	Guardianship; authorizes guardian of property of incapacitated person to contest validity of trust before it becomes irrevocable; requires court to determine whether there is alternative to guardianship if person is determined incapable of exercising his or her delegable rights; requires that validity of ward's durable power of attorney, trust, or trust amendment be reported in guardianship proceedings, etc. Amends Ch. 744, 737.2065.	
		JU 03/22/04 FAVORABLE WITH AMEND CF BI AAV AP	1
2	SB 1280 Peaden	Medicaid Program; expresses legislative intent to revise laws re Medicaid program.	
		AHS 03/16/04 WITHDRAWN RC 03/16/04 WITHDRAWN AP 03/31/04 WITHDRAWN CF AHS AP	
3	SB 2208 Wilson (Identical H 0351)	Family Day Care Homes/Restrictions; provides that no deed restrictions, covenants, or similar binding agreements running with land shall prohibit use of residential dwelling as family day care home; provides exceptions; provides for burden of proof; provides legislative intent. Creates 402.31302.	
		CF CP JU AHS AP	
4	SB 2730 Smith (Similar H 1259)	Kids Deserve Justice License Plate; creates said license plate; provides for distribution of annual use fees received from sale of such plates. Amends 320.08056, .08058.	
		TR 03/30/04 FAVORABLE CF FT ATD AP	

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2688

SPONSOR: Senator Campbell

SUBJECT: Guardianship

DATE: March 23, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Lang	JU	Fav/1 amendment
2.	Collins <i>SCC</i>	Whiddon <i>W</i>	CF	
3.			BI	
4.			AAV	
5.			AP	
6.				

I. Summary:

The bill authorizes a guardian of the property of an incapacitated grantor to contest the validity of a trust as an exception to the general rule that an action to contest the validity of a trust may not be commenced until the trust becomes irrevocable.

The bill also permits a court to find that a person is incapacitated without requiring the appointment of a guardian. A court must not appoint a guardian if there is an alternative, such as a trust or durable power of attorney, that will sufficiently address the problems of the incapacitated person. A trust, trust amendment, or durable power of attorney is not an alternative to the appointment of a guardian if an interested person files a verified statement that provides a factual basis for the belief that an instrument is invalid. Nevertheless, the bill provides that a court may appoint a guardian and allow the authority granted by a durable power of attorney to remain exercisable by an attorney in fact.

If a court denies the request of a guardian to contest the validity of a trust created by and for the benefit of a ward, the court must consider whether the guardian is needed to exercise the delegable rights of the ward. If a judicial proceeding determines that the ward's durable power of attorney, trust, or trust amendment is valid, or a petition is filed alleging that an alternative to guardianship exists, a court must consider whether a guardian is needed to exercise the delegable rights of the ward.

This bill substantially amends the following sections of the Florida Statutes: 737.2065, 744.331, and 744.441. The bill also creates section 744.462, Florida Statutes.

II. Present Situation:

Trusts

A “trust” is:

a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. The term[] . . . “beneficiary of a trust” signif[ies] one who has an equitable interest in property subject to a trust and who enjoys the benefit of the administration of the trust by a trustee. The trustee is the person who holds the legal title to the property held in trust, for the benefit of the beneficiary. The settlor, or trustor, is the person who creates the trust.¹

A grantor is one who creates or adds to a trust and includes a settlor or trustor and a testator who creates or adds to a trust.²

Purposes of a Revocable Trust

A revocable trust is: “A trust in which the settlor reserves the right to terminate the trust and recover the trust property and any undistributed income.”³ This type of instrument is commonly used as a will substitute. Unlike a will, however, a revocable trust allows a settlor to use the trust property during his or her lifetime.⁴

Trust Contests

Under s. 737.2065, F.S., the validity of a trust may only be contested after the trust has become irrevocable. According to the Florida Bar Real Property, Probate, and Trust Law Section, there have been instances where a settlor and beneficiary of a trust did not have the capacity to revoke a revocable trust procured by fraud, duress, mistake, or undue influence. In some of these cases no person, including a guardian, was able to challenge the validity of the trust to protect the settlor beneficiary from financial harm.

Guardianship

The intent of the Florida Guardianship Law in ch. 744, F.S., is to provide the least restrictive means necessary to provide assistance to a person who is not fully capable of acting on his or her own behalf.⁵ A guardianship is:

a trust relationship of the most sacred character, in which one person, called a “guardian,” acts for another, called the “ward,” which the law regards as incapable of managing his own affairs.⁶

¹ 55 A Fla. Jur. 2d Trusts s. 1 (database updated January 2004).

² Section 731.201(17), F.S.

³ Black’s Law Dictionary (7th ed. 1999).

⁴ Wm. Fletcher Belcher, *Proposed Exception to Existing Prohibition Against Contesting Revocable Trusts*, Fla. Bar Journal, Vol. XXV, No. 2, 11 (Winter 2003).

⁵ Section 744.1012, F.S.

Determination of Incapacity

Any person may file, under oath, a petition for determination of incapacity alleging that a person is incapacitated. The petition must provide factual information that demonstrates that a person is incapacitated. The petition will also state the delegable rights that an alleged incapacitated person is incapable of exercising.⁷ These delegable rights include the right to marry, vote, personally apply for government benefits, have a driver's license, travel, seek and retain employment, contract, sue and defend lawsuits, manage property, determine his or her residence, and consent to medical treatment.⁸ If applicable, a petition for the appointment of a guardian must be filed with the petition to determine incapacity.⁹

After a petition for determination of incapacity has been filed, a court must appoint an examining committee comprised of three health care professionals to examine and report the condition of the alleged incapacitated person.¹⁰ If the examining committee determines that the alleged incapacitated person is not incapacitated, the court must dismiss the petition for determination of incapacity.¹¹ If the examining committee determines that the alleged incapacitated person is incapacitated, the court must hold a hearing on the petition. If after a hearing, the court determines that a person is incapacitated, the court must also find that alternatives to guardianship were considered and that no alternatives to guardianship will sufficiently address the problems of the incapacitated person and appoint a guardian.¹² The costs of a proceeding adjudicating a person as incapacitated will be paid by a guardian from the property of the ward.¹³ If a petition for determination of incapacity is dismissed, the costs of the proceedings may be assessed against the petitioner.¹⁴

Authority of a Guardian

An order appointing a guardian must specify the specific powers and duties of the guardian and the delegable rights which have been removed from the ward.¹⁵ The order must preserve an incapacitated person's right to make decisions to the extent that he or she is able to do so.¹⁶ A guardian is empowered with the authority to protect the assets of the ward and to use the ward's property to provide for his or her care.¹⁷ Some powers under s. 744.441, F.S., may only be exercised by a guardian with court approval, include the power to:

- (2) Execute, exercise, or release any powers as trustee, personal representative, custodian for minors, conservator, or donee of any power of appointment or other power that the ward might have lawfully exercised, consummated, or executed if not incapacitated, if the best interest of the ward requires such execution, exercise, or release.

⁶ 28 Fla. Jur. 2d Guardian and Ward s. 1 (database updated January 2004).

⁷ Section 744.3201(1) and (2), F.S.

⁸ Section 744.3215(2) and (3), F.S.

⁹ Section 744.3201(3), F.S.

¹⁰ Section 744.331(4), F.S.

¹¹ Section 744.331(4), F.S.

¹² See s. 744.311(6)(b) and (f), F.S.

¹³ Section 744.311(7)(b), F.S.

¹⁴ Section 744.311(7)(c), F.S.

¹⁵ Section 744.344(1), F.S.

¹⁶ Section 744.344(2), F.S.

¹⁷ See ss. 744.361(4), and 744.444, F.S.

(11) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties.

(19) Create revocable or irrevocable trusts of property of the ward's estate which may extend beyond the disability or life of the ward in connection with estate, gift, income, or other tax planning or in connection with estate planning.

The forgoing statutory provisions appear to authorize a guardian to exercise a ward's rights under a revocable trust. This right may include the right to revoke the trust. Accordingly, a guardian was authorized by a court to exercise a ward's authority under a revocable trust to appoint a new trustee.¹⁸ In so holding, the court determined that a guardian with court approval has: "the power not only to execute the powers of the ward, but to exercise or release any powers the ward would have as trustee, personal, representative, custodian, conservator or donee"¹⁹

In *Ullman v. Garcia*, 645 So. 2d 168 (Fla. 3d DCA 1994), however, the court would not allow a guardian to attack the validity of a revocable trust that was alleged to have been created through undue influence. The case did not involve an attempt by a guardian to revoke the revocable trust. The court stated in holding that the guardian could not attack the validity of the trust:

that the guardian of an incapacitated person cannot seek to rewrite the testamentary plan of a ward by contesting the validity of a revocable trust on the basis of undue influence. A finding to the contrary would defeat the evident purpose of the settlor/ward, and interfere with the settlor/ward's vested right to dispose of her property as she pleases.²⁰

III. Effect of Proposed Changes:

The bill authorizes a guardian of the property of an incapacitated grantor to contest the validity of a trust as an exception to the general rule that an action to contest the validity of a trust may not be commenced until the trust becomes irrevocable.

The bill also permits a court to find that a person is incapacitated without requiring the appointment of a guardian. A court must not appoint a guardian if there is an alternative, such as a trust or durable power of attorney, that will sufficiently address the problems of the incapacitated person. A trust, trust amendment, or durable power of attorney is not an alternative to the appointment of a guardian if an interested person files a verified statement that provides a factual basis for the belief that an instrument is invalid. Nevertheless, the bill provides that a court may appoint a guardian and allow the authority granted by a durable power of attorney to remain exercisable by an attorney in fact.

¹⁸ *In Re Guardianship of Mueller v. Boyle*, 650 So. 2d 698, 699 (Fla. 4th DCA 1995).

¹⁹ *Id.* at 699.

²⁰ *Ullman v. Garcia*, 645 So. 2d 168, 170 (Fla. 3d DCA 1994)

If a court denies the request of a guardian to contest the validity of a trust created by and for the benefit of a ward, the court must consider whether the guardian is needed to exercise the delegable rights of the ward. If a judicial proceeding determines that the ward's durable power of attorney, trust, or trust amendment is valid, or a petition is filed alleging that an alternative to guardianship exists, a court must consider whether a guardian is needed to exercise the delegable rights of the ward.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes guardians to contest the validity of a ward's revocable trust.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not appear to foreclose the possibility that under s. 744.441(2), F.S., a guardian has the authority to revoke a revocable trust rather than attack the validity of the trust.²¹ The Legislature may wish to clearly provide that a trust may only be terminated by a guardian upon a judicial determination of invalidity.

²¹ See *In Re Guardianship of Mueller v. Boyle*, 650 So. 2d 698 (Fla. 4th DCA 1995).

VIII. Amendments:

#1 by Judiciary:

Corrects a spelling error in the title by changing the word “fir” to “for.”

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

Bill No. SB 2688Amendment No. 1

915344

CHAMBER ACTION

SenateHouse.
.
.
.
.
.1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

The Committee on Judiciary recommended the following
amendment:

Senate Amendment

On page 1, line 25, delete the word "fir"

and insert: for

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1280

SPONSOR: Senator Peadar

SUBJECT: The Medicaid Program

DATE: April 6, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins <i>SPC</i>	Whiddon <i>pw</i>	CF	
2.			AHS	
3.			AP	
4.				
5.				
6.				

I. Summary:

Senate Bill 1280 provides legislative intent to revise the laws relating to the Medicaid program. However, the specific statutory revisions are not stipulated in this bill.

This bill provides an effective date of July 1, 2004.

II. Present Situation:

Florida's Medicaid program is authorized under ss. 409.905 and 409.906, F.S., and provides health care coverage to selected low-income persons who meet federal and state eligibility requirements. The purpose of this program is to improve the health of people who might otherwise go without medical care for themselves and their children.

Florida's Medicaid program was established in 1970 and is administered by the Agency for Health Care Administration. Medicaid mainly serves low-income families and children, elderly persons who need long-term care services, and persons with disabilities. Florida's Medicaid program is one of the largest in the nation. In Fiscal Year 2003-04, the program is expected to expend almost \$12.7 billion to pay for health care services for approximately 2.1 million clients each month.

In order to receive federal Medicaid funds, Florida must comply with federal requirements related to recipient eligibility and scope of medical services. For example, as required by federal guidelines, Florida provides health care coverage to low-income single parents and their children who receive cash assistance, children in foster care, and low-income elderly, blind, or disabled clients.

Florida's Medicaid Program is funded through federal and state revenues. The federal share is funded through Title XIX of the Social Security Act. The state also receives Title XXI funds to provide health care services to certain children not covered by Medicaid. For Fiscal Year 2003-04, the Legislature appropriated almost \$12.7 billion to pay for health care services for an estimated 2.1 million clients per month (Medicaid clients and children in low-income families who do not qualify for Medicaid).

Legislative Appropriations	
<i>General Revenue</i>	\$3,534,496,087
<i>Trust Funds</i>	\$9,145,738,807
<i>Total</i>	\$12,680,234,894

Source: LAS/PBS Fiscal Year 2003-04 Appropriations.

Note: Trust funds include both state and federal monies. Other sources include county contributions, drug rebates, cigarette taxes, and hospital fees.

Most of the state's Medicaid funds pay for health care services. For Fiscal Year 2003-04, the Legislature allotted approximately 1.4% (or almost \$173 million) of its Medicaid budget to pay for administrative functions, such as program planning, data processing, and contract management. Most of the Medicaid administrative budget pays for full-time employee salaries and benefits and other personnel services and for Medicaid fiscal agent, ACS State Healthcare.

III. Effect of Proposed Changes:

Senate Bill 1280 sets forth legislative intent to revise the Florida Statutes as they pertain to the Medicaid program. An effective date of July 1, 2004 is provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:**C. Government Sector Impact:****VI. Technical Deficiencies:**

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: PCS/SB 1280

SPONSOR: Children and Families Committee and Senator Peadar

SUBJECT: The Medicaid Program

DATE: April 7, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins <i>SBC</i>	Whiddon <i>W</i>	CF	
2.			AHS	
3.			AP	
4.				
5.				
6.				

I. Summary:

This legislation removes the Developmental Disabilities program from the Department of Children and Family Services (the department or DCF) and establishes the program as "The Agency for Persons with Disabilities" (APD). The newly created agency is to be administratively housed within the department but established as a separate budget entity that is not subject to the control, supervision, or the direction of the department.

The director for this agency is to be appointed by the Governor to administer the affairs of the agency and is authorized to hire staff within available resources.

The agency has programmatic responsibility for the provision of all services for persons with developmental disabilities pursuant to chapter 393 of the Florida Statutes. However, fiscal management of the home and community-based waiver services is to be managed by the Agency for Health Care Administration (AHCA). The new agency will retain the fiscal and programmatic management of the developmental disabilities institutions and those community-based services that are currently funded by general revenue.

Effective October 1, 2004, the Developmental Disabilities program and the developmental disabilities institutions programs in the department are to be transferred to the Agency for Persons with Disabilities by a type 2 transfer. Prior to this date, the agency and the department in consultation with the Department of Management Services are to determine the number of positions and the resources within the department dedicated to the program that are to be transferred to the agency and which staff persons from the department are to provide administrative support.

The Director of the Agency for Persons with Disabilities is directed to work in consultation with the Secretaries from DCF and AHCA or their designees to develop a transition plan. This plan is to be submitted to the Executive Office of the Governor for approval by September 1, 2004.

The agency is directed to enter into inter-agency agreements with AHCA and DCF that delineate the responsibilities of each organization. These agreements must also address the operational support of the new agency as well as reimbursement mechanisms. The bill also directs APD, AHCA, and DCF to work together to develop a plan to ensure all necessary electronic and paper-based data is accessible to the Medicaid program. Electronic records are to be migrated to a new system that is compatible with the Florida Medicaid Management Information System.

A plan is to be developed by APD and AHCA for the relocation of the local APD staff to the AHCA area offices. Provisions of the plan are to address leases, reimbursement of collocation costs, office space, and other operating expenses. Further, effective October 1, 2004, APD is to enter into an agreement with DCF for the provision of day-to-day administrative and operational needs or APD is no longer in need of such services.

The Office of Program Policy and Government Accountability must identify and evaluate statewide entities receiving state funding to provide services for persons with disabilities. A report from OPPAGA is due to the Governor and the Legislature by December 2005.

This bill amends sections 20.19, 393.063, 393.064, 393.0655, 393.066, 393.0661, 393.068, 393.0695, 393.11, 393.13, 393.17, 393.22, 393.502, 408.301, 408.302, and 409.906 of the Florida Statutes. This bill creates section 20.197 of the Florida Statutes. Sections 393.068 (8), 393.14, 393.165, 393.166, and 393.505 of the Florida Statutes are repealed.

This bill takes effect July 1, 2004.

II. Present Situation:

The Department of Children and Family Services

The mission of the Department of Children and Family Services (DCF or department) is to work in partnership with local communities to help people be self sufficient and live in stable families and communities and to deliver or provide for the delivery of all family services. The Developmental Disabilities program currently resides within the department and helps to meet its mission.

The department is responsible for the delivery of diverse programs throughout the state of Florida. Program service areas include Adult Services, Child Care Services, Developmental Disabilities, Economic Self-Sufficiency Services, Family Safety, Mental Health, Refugee Services, and Substance Abuse. These programs are directed by the Secretary at the headquarters level and administered in 14 separate districts or regions that are managed by a District Administrator.

The Developmental Disabilities Program

Within the department, the Developmental Disabilities program provides support services to enable persons with developmental disabilities to live productive lives and achieve personal outcomes. The program is comprised of two main components, developmental disabilities institutions¹ and community-based care. The program is administered through a central program office in Tallahassee, four state developmental disabilities institutions, and 14 district/regional developmental disabilities offices.

Most client services are provided contractually by community-based care providers and are paid for through the use of federal waivers (that are managed by the Agency for Health Care Administration) and general revenue funding. These services may include medical care, therapy, vocational training and employment, case management, residential and basic care, daily living assistance, transportation, and recreation.

During recent years, the Developmental Disabilities program has run millions of dollars over budget despite significant funding increases. Further, the program has consistently maintained a long list of clients who are waiting for services. At the Legislature's request, a program review conducted by the Office of Program Policy Analysis and Government Accountability (OPPAGA)² focused on the rising costs of the Developmental Disabilities program. An analysis of program expenditure data for FY 1996-97 through FY 2000-2001 found errors that OPPAGA reported made it impossible for the department to accurately assess the number of services that a client received or the average rate paid for the different units of service. Since this study, and at the direction of the Legislature, the department conducted a program redesign of the home and community-base waiver program and developed a methodology for standardized service rates. These initiatives were conducted to help the program contain expenditures and reduce the number of persons who were waiting to receive services.

Following the implementation of the standardized rate payment in July 2004, the department conducted a fiscal analysis of expenditures for the first quarter. Budget projections reflected that the rate of spending would exceed the annual funding allocated for the program. Based upon this analysis, the department implemented emergency rate reductions. However, further analysis reflected that the department's projections had been faulty.

Concerns have been expressed that the management of the Developmental Disabilities program has been neglected and does not receive the attention that is needed in a department as large and diverse as DCF. It has been suggested that the program could be more efficiently managed if it was separated from the Department of Children and Families. It has also been suggested that the fiscal management of the program could be better managed at the Agency for Health Care Administration, the agency that currently shares responsibility for the management of the federal waiver programs, including the Developmental Disabilities waiver, which accounts for an increasing proportion of that program's focus.

¹ There are four state institutions operated by the developmental disabilities program. They include Sunland, in Jackson County, Tacachale, in Alachua County, Gulf Coast, in Lee County, and Landmark in Miami-Dade County. There are more than 3000 staff employed at these institutions.

² Legislative Options to Control Rising Developmental Disabilities Costs, Report No. 02-09, February 2002, Office of Program Policy Analysis and Government Accountability.

III. Effect of Proposed Changes:

The Proposed Committee Substitute for SB 1280 moves the Developmental Disabilities program from the department by a type 2 transfer and establishes the program as “The Agency for Persons with Disabilities” (APD). This agency is to be administratively housed within the Department of Children and Family Services but established as a separate budget entity that is not subject to the control, supervision, or the direction of the department. A director for this agency is to be appointed by the Governor and is authorized to hire staff within appropriated resources.

The agency is to be responsible for the provision of all services for persons with developmental disabilities pursuant to chapter 393 of the Florida Statutes. The agency is to retain programmatic responsibilities for all programs and the fiscal management of the developmental disabilities institutions. However, fiscal management for the provision of waiver services is to be managed by the Agency for Health Care Administration.

The Agency for Persons with Disabilities is directed to enter into inter-agency agreements with AHCA and DCF that delineates certain specified responsibilities of each organization. These agreements should also address the provision of operational support for the new agency as well as reimbursement mechanisms.

Level 2 screening is required for certain positions and volunteers and must additionally include local criminal checks through local law enforcement agencies. Exceptions to these screening requirements are identified.

The bill also provides clarifying language in certain sections, revises definitions, and repeals obsolete language.

The department is directed to submit a detailed report of the financial status of the Developmental Disabilities program as well as an analysis and recommendations relating to an information system that will replace the department’s ABC system, and OPPAGA is directed to identify and evaluate all statewide state or non-state programs receiving state or federal funding to provide services for persons with disabilities.

Section 1: The Proposed Committee Substitute for SB 1280 amends s. 20.19, F.S., removing the Developmental Disabilities program from the Department of Children and Families.

Section 2: The bill creates s. 20.197, F.S., establishing the Agency for Persons with Disabilities that is to be administratively housed within the Department of Children and Family Services. The agency is to be a separate budget entity that is not subject to the control, supervision, or direction of the department in any manner.

The director of the agency is to be appointed by and serve at the pleasure of the Governor. The director is required to administer the affairs of the agency and establish administrative units as needed. The director is also authorized to employ assistants, professional staff, and other employees, within appropriated resources, that are needed to discharge the powers and duties of the agency. The agency is responsible for the provision of all services pursuant to chapter 393, F.S., for persons with developmental disabilities. These responsibilities include the operation of

all state institutional programs and the programmatic management of the Medicaid waiver programs. The agency is further directed to engage in other administrative activities that are deemed necessary to effectively and efficiently address the needs of clients who are served by the Agency for Persons with Disabilities.

The agency is directed to enter into an interagency agreement that delineates the responsibilities of the Agency for Health Care Administration for:

- The terms and execution of contracts with Medicaid providers for the provision of services through Medicaid, including federally approved waiver programs,
- The billing, payment, and reconciliation of claims for Medicaid services that are to be reimbursed by the agency,
- The implementation of utilization management measures, including the prior authorization of services plans and the streamlining and consolidation of waivers services, to ensure the cost effective provision of needed Medicaid services and to maximize the number of persons with access to such services, and
- A system of approving each client's plan of care to ensure that the services provided are necessary to prevent the client requiring services of an intermediate care facility for the developmentally disabled.

Section 3: This section of the bill amends s. 393.063, F.S., *Definitions*, deleting terms that are no longer used in the chapter: "active treatment," "developmental training facility," "rehabilitation workshop facility," and "supported employee." This section also establishes new definitions for the terms "agency," "day habilitation service," and "residential rehabilitation." Certain other definitions are clarified and updated.

Section 4: Amends s. 393.064(1), F.S., *prevention*. This section deletes the requirement that the department identify prevention funding needs in its annual legislative budget request. The department reports that this change will reduce the duplication of program services provided by Children's Medical Services (which is responsible for early intervention program for persons 0 – 3 years of age) and the Developmental Disabilities Council (which is currently responsible for prevention/awareness programs).

Section 5: Amends s. 393.0655, F.S., *screening of direct service providers*. This section continues the requirement that direct service providers receive a level 2 employment screening. The bill specifies that identified positions and volunteers must receive this screening. Background screening must additionally include local criminal checks through local law enforcement agencies. Exceptions to these screening requirements include:

- Volunteers assisting on an intermittent basis for fewer than 40 hours a month if the person is under the direct and constant supervision of persons meeting the screening requirements of this section;
- Physicians, nurses, or other professionals licensed and regulated by the Department of Health (DOH) who are providing services within their scope of licensed practice;
- Persons providing supports or services to an individual with developmental disabilities who are selected and paid by the individual or the individual's family; and
- Persons living with the direct services provider who are between the ages and 12 and 18 years who are only required to be screened for delinquency records.

Section 6: Amends s. 393.066, F.S., *community services and treatment for persons who are developmentally disabled*. This section:

- Deletes language specifying that programs of services and treatment for clients are to be administered through the districts to serve all clients regardless of the setting they live in.
- Specifies that all elements of community based services are to be made available and be provided consistently statewide rather than by district.
- Deletes language reflecting the intent of the Legislature for the department to prioritize appropriations for community-based services and the requirement that the department's five year plan reflect this prioritization of individualized, community-based supports and services for consumers and their families.
- Directs the agency to provide supports and services, within available resources, to assist Medicaid waiver clients who pursue gainful employment.
- Deletes language authorizing the department to permit construction of a residential facility.
- Deletes language allowing the department to adopt rules to ensure compliance with federal laws or regulations that apply to services provided in s. 393.066, F.S.

Section 7: Amends s. 393.0661, F.S., *home and community-based services delivery and comprehensive redesign*.

This proposed committee substitute amends s. 393.0661(1), F.S., removing directions to the department to include certain elements in the plan for system redesign. These tasks have been finalized.

The agency is also directed to utilize an assessment instrument that is valid and reliable to identify the support needs of clients. The agency is authorized to contract with an external vendor or to use support coordinators to complete the client assessment if the proper safeguards and training have been developed to ensure inter-rater reliability. The agency may, with the concurrence of AHCA, contract for services to determine the medical necessity of services and to establish individualized budgets for clients.

Section 8: Amends subsections (1) and (2) of section 393.068, F.S., relating to the family care program. This section:

- Deletes language reflecting that the Legislature recognizes the importance of family support in the long range success of deinstitutionalization and that core elements of caring for an individual who is developmentally disabled is support and flexibility of coordinating support and services.
- Specifies that the services and supports authorized under this program are contingent upon the availability of resources, strikes a redundant reference to parent training and respite care and adds supported employment to the list of authorized services.
- Deletes language prioritizing appropriations for family-based services and supports for persons with developmental disabilities and the requirement for this priority to be reflected in the department's five year plan. The department reports that five year plans are no longer developed.
-

Section 9: Amends s. 393.0695, F.S., *provision of in-home subsidies*. This section is amended to delete obsolete provisions and to change reference from the department to the agency.

Section 10: This section amends s. 393.11, F.S., *involuntary admission to residential services*. This section is amended to delete obsolete provisions and to change reference from the department to the agency.

Section 11: This section amends s. 393.13, F.S., *personal treatment of persons who are developmentally disabled*. Based on the legislative intent that services for persons with disabilities should be directed by normalization principles, the bill directs that services should reduce the use of sheltered workshops and other non-competitive employment activities and promote opportunities for gainful employment for persons who seek such employment. The bill also deletes the requirement to develop a plan for implementation of meaningful treatment programs.

Section 12: This section amends s. 393.17, F.S., *behavioral programs; certification of behavior analysts; fees*. Current language requiring the department to by rule implement and manage a behavior analyst certification program and reflecting the minimum requirements for certification has been deleted. The proposed language authorizes the agency to recognize certification of behavior analysts awarded by a non-profit corporation if the corporation's work has the support of the Association for Behavior Analysis International. This change may result in persons becoming certified behavior analyst, who do not meet the requirements that are currently established in rule which are to ensure that qualified persons oversee the design and implementation of programs for persons with developmental disabilities.

Section 13: This section amends s. 393.22, F.S., *transfer of appropriations; barriers to services; financial commitment to programs*. This legislation deletes:

- Provisions that the transfer of funding from the developmental services program if the secretary determines such a transfer will not adversely effect treatment programs; and
- Prohibition against the reduction of an ongoing commitment of funding to services for persons with mental retardation, cerebral palsy, autism, or spina bifida because of the development of programs for other disabilities.

Section 14: This section amends s. 393.502, F.S., *family care councils*. This section:

- Specifies that a family care council will be established in each service area of the agency rather than each district.
- Deletes the provisions for appointments to the council, when the Governor does not act on a recommendation for membership within a specified time period and deletes the terms of membership.

Section 15: This section amends s. 408.301, F.S., *legislative findings*. This section is amended to delete obsolete provisions and to change references from the department to the agency. The Department of Elder Affairs (DOEA) is included in this section as an example of clients with special needs. The bill further directs AHCA to include DOEA in the development of plans to assure that the needs of special clients are met.

Section 16: This section amends s. 408.302, F.S., *interagency agreement*. This section is amended to delete obsolete provisions and to require that AHCA enter into interagency agreements with APD and DOEA, in addition to the currently required DCF and Department of

Health, to assure coordination and to provide for these agencies' prior to approval of AHCA rules that impact their respective missions.

Section 17: This section amends s. 409.906, F.S., and deletes language that is no longer used relating to the "Project AIDS Care Waiver."

Section 18: Repeals ss. 393.068(8), 393.14, 393.165, and 393.505, of the Florida Statutes:

- Subsection 393.068(8), F.S., specifies that a receiver may be held personally liable only for the receiver's own gross negligence, intentional acts, or breach of fiduciary duty;
- Section 393.14, F.S., specifies the requirements of a multiyear plan;
- Section 393.165, F.S., relates to legislative findings that non-institutional home and community-based services are cost effective and an appropriate alternative to institutional care; and
- Section 393.505, F.S., authorizes the department to initiate projects to demonstrate the effectiveness of day treatment services.

Section 19: This section specifies that effective October 1, 2004, the Developmental Disabilities program and the developmental disabilities institutions programs in the department are transferred to the Agency for Persons with Disabilities by a type 2 transfer pursuant to s. 20.06, F.S. Prior to this date, the agency and the department in consultation with the Department of Management Services are to determine the number of positions and the resources within the department dedicated to the Developmental Disabilities program that are to be transferred to the agency and are to determine who within the department will provide administrative support to the agency.

The director of APD is directed to work in consultation with the Secretaries for DCF and AHCA or their designees to prepare a transition plan that at a minimum addresses building leases, information support systems, cash ownership and transfer, administrative support functions, inventory, expenditure transfers, budget authority and positions, and certifications forward. This plan is to be submitted by September 1, 2004, to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

This bill directs that the Agency for Persons with Disabilities and the Department of Children and Family Services are to work with AHCA to develop a plan that ensures all of the necessary electronic and paper-based data of the Developmental Disabilities program is accessible to the Medicaid program. All electronic records are to be migrated to a new data system that is compatible with the Florida Medicaid Management Information System.

The Agency for Persons with Disabilities and AHCA are directed to develop a plan for the orderly relocation of the non-central office staff of APD to the area offices of AHCA. This plan is to include a schedule that takes into consideration the availability of space, the expiration of current leases and the initiation of new leases to accommodate the relocated staff as well as appropriate reimbursement for collation costs, office space, and other operating expenses.

Effective October 1, 2004, the Agency for Persons with Disabilities is to enter into an interagency agreement with DCF for the provision of day-to-day administrative and operational needs until the agency no longer requires the provision of services through such an agreement.

These administrative and operational services include, but are not limited to, personnel, purchasing, information technology support, legal support, and other related services.

Any pending judicial or administrative proceedings on October 30, 2004, are not affected by this act. The Agency for Persons with Disabilities is to be substituted as the real party of interest in respect to any pending proceedings.

Section 20: Directs OPPAGA to identify and evaluate statewide entities receiving state funding for the purpose of addressing the interests of, but not directly providing services for, persons with disabilities. The stated purpose of this analysis is to provide findings and recommendations relating to:

- The extent to which the activities of these entities are coordinated;
- The similarities and differences in the organizational missions of these entities; and
- The amount of state funds provided to these entities for the purpose of addressing the interests of persons with disabilities, the uses of these funds, and whether they duplicate the efforts of other private or federally funded entities.

A report is to be completed and provided to the Governor and the Legislature by December 2005.

This legislation is to take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

The Governor and the Department of Children and Family Services report that there will be no fiscal impact associated with this bill. However, the organizational structure proposed for the new agency includes the positions of Deputy Director of Staff, General Counsel, Senior Attorney, Inspector General, and a Deputy Director of Operations and their staffs. Offices for Legislative Affairs, Communications, Administrative Services, and Information Technology are also proposed. These offices and positions are not currently established in the Developmental Disabilities Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

1 A bill to be entitled
2 An act relating to developmental disabilities;
3 amending s. 20.19, F.S.; removing the
4 developmental disabilities program from the
5 Department of Children and Family Services;
6 creating s. 20.197, F.S.; establishing the
7 Agency for Persons with Disabilities for the
8 purpose of providing services to persons with
9 developmental disabilities, including
10 institutional services; directing the agency to
11 execute interagency agreements with the Agency
12 for Health Care Administration for the
13 financial management of the Medicaid waivers
14 and the Department of Children and Family
15 Services for administrative support; amending
16 s. 393.063, F.S.; updating definitions and
17 deleting obsolete definitions; amending s.
18 393.064, F.S.; deleting requirements that the
19 agency's legislative budget request include
20 funding for prevention; amending s. 393.0655,
21 F.S.; requiring Level 2 screening for specified
22 service providers; amending s. 393.066, F.S.;
23 removing requirement that services be
24 administered and approved by the districts;
25 modifying a requirement to provide certain
26 services; deleting a requirement for a 5-year
27 plan relating to community-based services;
28 adding a requirement to assist clients in
29 gaining employment; repealing obsolete
30 requirement authorizing the state to lease or
31 construct residential facilities; deleting

SENATE COMMITTEE CHILDREN AND FAMILIES

DATE:

4/12/04

TIME:

9:00 a.m.

1 authorization to adopt rules ensuring
2 compliance with federal rules; amending s.
3 393.0661, F.S.; deleting an obsolete provision;
4 modifying provisions relating to an assessment
5 instrument; adding requirements for adoption of
6 rate methodologies; amending s. 393.068, F.S.;
7 making service provision subject to available
8 resources; updating list of services to be
9 provided; deleting provision referring to
10 5-year plans; amending s. 393.0695, F.S.;
11 requiring in-home subsidy amounts to be
12 reassessed annually; amending s. 393.11, F.S.;
13 deleting provisions referring to districts,
14 department programs, and the nonexistent
15 Department of Labor and Employment Security;
16 amending s. 393.13, F.S.; deleting obsolete
17 provisions; adding legislative intent relating
18 to reducing the use of sheltered workshops;
19 amending s. 393.17, F.S.; authorizing the
20 agency to contract for the certification of
21 behavioral analysts; deleting provisions
22 relating to a certification program and
23 provisions allowing fees; amending s. 393.22,
24 F.S.; deleting prohibition preventing transfer
25 of funds and ensuring financial commitment for
26 specified developmental conditions; amending s.
27 393.502, F.S.; removing reference to districts;
28 deleting a provision permitting appointment of
29 family care council members if the Governor
30 does not act; amending ss. 408.301, 408.302,
31 F.S.; amending legislative intent to add the

1 Agency for Persons with Disabilities and the
2 Department of Elderly Affairs as agencies that
3 the Agency for Health Care Administration must
4 enter into interagency agreement with regarding
5 persons with special needs; amending s.
6 409.906, F.S.; clarifying powers of the Agency
7 for Health Care Administration with respect to
8 limiting coverage for certain services;
9 repealing s. 393.14, F.S.; requiring a
10 multiyear plan; repealing s. 393.165, F.S.,
11 relating to ICF/DDs; repealing s. 393.166,
12 F.S., relating to homes for special services;
13 repealing s. 393.505, F.S., relating to
14 comprehensive day treatment service projects;
15 transferring programs and institutions relating
16 to developmental disabilities from the
17 Department of Children and Family Services to
18 the Agency for Persons with Disabilities;
19 providing duties of those agencies as well as
20 the Department of Management Services;
21 providing for substitution of parties in
22 administrative and judicial proceedings;
23 providing duties of the Office of Program
24 Policy Analysis and Government Accountability;
25 providing for a report; amending ss. 92.53,
26 397.405, 400.464, 419.001, 914.16, 914.17,
27 918.16, 943.0585, 943.059, F.S.; conforming
28 cross-references; amending ss. 393.0641,
29 393.065, 393.0651, 393.067, 393.0673, 393.0675,
30 393.0678, 393.071, 393.075, 393.115, 393.12,
31 393.125, 393.14, 393.15, 393.501, 393.503,

393.506, F.S.; conforming to the changes made
by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (4) of section
20.19, Florida Statutes, is amended to read:

20.19 Department of Children and Family
Services.--There is created a Department of Children and
Family Services.

(4) PROGRAM OFFICES AND SUPPORT OFFICES.--

(b) The following program offices are established:

1. Adult Services.

2. Child Care Services.

~~3.--Developmental-Disabilities-~~

~~3.4-~~ Economic Self-Sufficiency Services.

~~4.5-~~ Family Safety.

~~5.6-~~ Mental Health.

~~6.7-~~ Refugee Services.

~~7.8-~~ Substance Abuse.

Section 2. Section 20.197, Florida Statutes, is
created to read:

20.197 Agency for Persons with Disabilities.--There is
created the Agency for Persons with Disabilities, housed
within the Department of Children and Family Services for
administrative purposes only. The agency shall be a separate
budget entity not subject to control, supervision, or
direction by the Department of Children and Family Services in
any manner, including, but not limited to, personnel,
purchasing, transactions involving real or personal property,
and budgetary matters.

1 (1) The director of the agency shall be the agency
2 head for all purposes and shall be appointed by the Governor
3 and serve at the pleasure of the Governor. The director shall
4 administer the affairs of the agency and establish
5 administrative units as needed and may, within available
6 resources, employ assistants, professional staff, and other
7 employees as necessary to discharge the powers and duties of
8 the agency.

9 (2) The agency shall be responsible for the provision
10 of all services provided to persons with developmental
11 disabilities pursuant to chapter 393, including the operation
12 of all state institutional programs and the programmatic
13 management of Medicaid waivers established to provide services
14 to persons with developmental disabilities.

15 (3) The agency shall engage in such other
16 administrative activities as are deemed necessary to
17 effectively and efficiently address the needs of the agency's
18 clients.

19 (4) The agency shall enter into an interagency
20 agreement that delineates the responsibilities of the Agency
21 for Health Care Administration for the following:

22 (a) The terms, and execution of contracts with
23 Medicaid providers for the provision of services provided
24 through Medicaid, including federally approved waiver
25 programs.

26 (b) Billing, payment, and reconciliation of claims for
27 Medicaid services reimbursed by the agency.

28 (c) The implementation of utilization management
29 measures, including the prior authorization of services plans
30 and the streamlining and consolidation of waivers services, to
31 ensure the cost-effective provision of needed Medicaid

1 services and to maximize the number of persons with access to
2 such services.

3 (d) A system of approving each client's plan of care
4 to ensure that the services on the plan of care are those that
5 without which the client would require the services of an
6 intermediate care facility for the developmentally disabled.

7 Section 3. Section 393.063, Florida Statutes, is
8 amended to read:

9 393.063 Definitions.--For the purposes of this
10 chapter:

11 ~~{1}--"Active-treatment"--means-the-provision-of-services~~
12 ~~by-an-interdisciplinary-team-necessary-to-maximize-a-client's~~
13 ~~individual-independence-or-prevent-regression-or-loss-of~~
14 ~~functional-status-~~

15 (1){2} "Agency" means the Agency for Persons with
16 Disabilities Health-Care-Administration.

17 (2){3} "Autism" means a pervasive, neurologically
18 based developmental disability of extended duration which
19 causes severe learning, communication, and behavior disorders
20 with age of onset during infancy or childhood. Individuals
21 with autism exhibit impairment in reciprocal social
22 interaction, impairment in verbal and nonverbal communication
23 and imaginative ability, and a markedly restricted repertoire
24 of activities and interests.

25 (3){4} "Cerebral palsy" means a group of disabling
26 symptoms of extended duration which results from damage to the
27 developing brain that may occur before, during, or after birth
28 and that results in the loss or impairment of control over
29 voluntary muscles. For the purposes of this definition,
30 cerebral palsy does not include those symptoms or impairments
31 resulting solely from a stroke.

1 ~~(4)~~+5+ "Client" means any person determined eligible
2 by the agency department for developmental services under this
3 chapter.

4 ~~(5)~~+6+ "Client advocate" means a friend or relative of
5 the client, or of the client's immediate family, who advocates
6 for the best interests of the client in any proceedings under
7 this chapter in which the client or his or her family has the
8 right or duty to participate.

9 ~~(6)~~+7+ "Comprehensive assessment" means the process
10 ~~which-is~~ used to determine eligibility for ~~developmental~~
11 ~~services under this chapter and-develop-the-family-or~~
12 ~~individual-support-plan. The-term-includes-review-and~~
13 ~~evaluation-of-information-provided-by-the-applicant,-the~~
14 ~~individual-receiving-supports-or-services-through~~
15 ~~developmental-services,-or-the-family,-and-others-providing~~
16 ~~supports-or-services-to-the-individual-or-family,-as-well-as~~
17 ~~the-use-of-formal-assessment-instruments-~~

18 ~~(7)~~+8+ "Comprehensive transitional education program"
19 means a group of jointly operating centers or units, the
20 collective purpose of which is to provide a sequential series
21 of educational care, training, treatment, habilitation, and
22 rehabilitation services to persons who have developmental
23 ~~disabilities,-as-defined-in-subsection-(12),~~ and who have
24 severe or moderate maladaptive behaviors. However, nothing in
25 this subsection shall require such ~~comprehensive-transitional~~
26 ~~education~~ programs to provide services only to persons with
27 ~~developmental disabilities,-as-defined-in-subsection-(12).~~ All
28 such services shall be temporary in nature and delivered in a
29 structured residential setting with the primary goal of
30 incorporating the normalization principle to establish
31 permanent residence for persons with maladaptive behaviors in

1 facilities not associated with the comprehensive transitional
2 education program. The staff shall include psychologists and
3 teachers ~~who, and such staff personnel~~ shall be available to
4 provide services in each component center or unit of the
5 program. The psychologists shall be individuals who are
6 licensed in this state and certified as behavior analysts in
7 this state, or individuals who ~~meet the professional~~
8 ~~requirements established by the department for district~~
9 ~~behavior analysts and~~ are certified as behavior analysts
10 pursuant to s. 393.17 in this state.

11 (a) Comprehensive transitional education programs
12 shall include a minimum of two component centers or units, ~~as~~
13 ~~defined in this paragraph~~, one of which shall be either an
14 intensive treatment and educational center or a transitional
15 training and educational center, which provide services to
16 persons with maladaptive behaviors in the following sequential
17 order:

18 1. Intensive treatment and educational center. This
19 component is a self-contained residential unit providing
20 intensive psychological and educational programming for
21 persons with severe maladaptive behaviors, whose behaviors
22 preclude placement in a less restrictive environment due to
23 the threat of danger or injury to themselves or others.

24 2. Transitional training and educational center. This
25 component is a residential unit for persons with moderate
26 maladaptive behaviors, providing concentrated psychological
27 and educational programming emphasizing a transition toward a
28 less restrictive environment.

29 3. Community transition residence. This component is
30 a residential center providing educational programs and such
31 support services, training, and care as are needed to assist

1 persons with maladaptive behaviors to avoid regression to more
2 restrictive environments while preparing them for more
3 independent living. Continuous-shift staff shall be required
4 for this component.

5 4. Alternative living center. This component is a
6 residential unit providing an educational and family living
7 environment for persons with maladaptive behaviors, in a
8 moderately unrestricted setting. Residential staff shall be
9 required for this component.

10 5. Independent living education center. This
11 component is a facility providing a family living environment
12 for persons with maladaptive behaviors, in a largely
13 unrestricted setting which includes education and monitoring
14 appropriate to support the development of independent living
15 skills ~~by-the-students~~.

16 (b) Centers or units that are components of a
17 comprehensive transitional education program are subject to
18 the license issued to the comprehensive transitional education
19 program and may be located on either single or multiple sites.

20 (c) Comprehensive transitional education programs
21 shall develop individual education plans for each person with
22 maladaptive behaviors who receives services therein. Such
23 individual education plans shall be developed in accordance
24 with the criteria specified ~~included~~ in ~~Pub-L-No-94-142~~, 20
25 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300.

26 (d) In no instance shall the total number of persons
27 with maladaptive behaviors being provided services in a
28 comprehensive transitional education program exceed 120.

29 (e) This subsection shall authorize licensure for
30 comprehensive transitional education programs which by July 1,
31 1989:

1 1. Are in actual operation; or

2 2. Own a fee simple interest in real property for
3 which a county or city government has approved zoning allowing
4 for the placement of the facilities described in this
5 subsection, and have registered an intent with the department
6 to operate a comprehensive transitional education program.
7 However, nothing shall prohibit the assignment by such a
8 registrant to another entity at a different site within the
9 state, so long as there is compliance with all criteria of the
10 comprehensive transitional education program and local zoning
11 requirements and provided that each residential facility
12 within the component centers or units of the program
13 authorized under this subparagraph shall not exceed a capacity
14 of 15 persons.

15 ~~(9) -- "Day-service" means the care, protection, and~~
16 ~~supervision of a client for a period of less than 24 hours a~~
17 ~~day on a regular basis which supplements for the client, in~~
18 ~~accordance with his or her individual needs, daily care,~~
19 ~~enrichment opportunities, and health supervision.~~

20 (8) ~~(40)~~ "Day habilitation facility" means any
21 nonresidential facility which provides day habilitation
22 services.

23 (9) "Day habilitation service" means assistance with
24 the acquisition, retention, or improvement in self-help,
25 socialization, and adaptive skills which takes place in a
26 nonresidential setting, separate from the home or facility in
27 which the individual resides. Day habilitation services shall
28 focus on enabling the individual to attain or maintain his or
29 her maximum functional level and shall be coordinated with any
30 physical, occupational, or speech therapies listed in the plan
31 of care.

~~{11}--"Department"--means-the-Department-of-Children-and
Family-Services-~~

(10)~~{12}~~ "Developmental disability" means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

(11)~~{13}~~ "Developmental disabilities services institution" means a state-owned and state-operated facility, formerly known as a "Sunland Center," providing for the care, habilitation, and rehabilitation of clients with developmental disabilities.

~~{14}--"Developmental-training-facility"--means-any
nonresidential-facility-which-provides-basic-training-and
habilitation-to-clients-~~

(12)~~{15}~~ "Direct service provider," also known as "caregiver" in chapters 39 and 415 or "caretaker" in provisions relating to employment security checks, means a person 18 years of age or older who has direct contact with individuals with developmental disabilities, or has access to a client's living areas or to a client's funds or personal property, and is not a relative of such ~~unrelated-to-the~~ individuals ~~with-developmental-disabilities~~.

~~{a}--The-term-"direct-service-provider"--also-includes
any-person,-including-members-of-the-direct-service-provider's
family,-over-12-years-of-age-who-resides-with-the-direct
service-provider-when-~~

~~1.--The-direct-service-provider-provides-supports-or
services-in-his-or-her-residence;~~

~~2.--The-direct-service-provider-provides-supports-or
services-in-a-facility-adjacent-to-his-or-her-residence;-or~~

1 ~~3---The-person-residing-with-the-direct-service~~
2 ~~provider-has-direct-contact-with-the-individual-with~~
3 ~~developmental-disabilities-during-the-hours-of-provision-of~~
4 ~~supports-or-services-~~

5 ~~(b)--Persons-residing-with-the-direct-service-provider,~~
6 ~~including-family-members,-who-are-between-the-ages-of-12-years~~
7 ~~and-18-years-are-not-required-to-be-fingerprinted,-but-shall~~
8 ~~be-screened-for-delinquency-records-~~

9 ~~(c)--A-volunteer-who-assists-on-an-intermittent-basis~~
10 ~~for-less-than-40-hours-per-month-is-not-a-direct-service~~
11 ~~provider-for-the-purposes-of-screening-if-the-volunteer-is~~
12 ~~under-the-direct-and-constant-supervision-of-persons-who-meet~~
13 ~~the-personnel-requirements-of-s.-393.0655-~~

14 ~~(d)--A-physician,-nurse,-or-other-professional-licensed~~
15 ~~and-regulated-by-the-Department-of-Business-and-Professional~~
16 ~~Regulation-is-not-a-direct-service-provider-for-the-purposes~~
17 ~~of-screening-if-the-service-he-or-she-is-providing-to-a-client~~
18 ~~is-within-the-scope-of-practice-for-which-he-or-she-is~~
19 ~~licensed-~~

20 ~~(e)--A-person-selected-by-the-family-or-the-individual~~
21 ~~with-developmental-disabilities-and-paid-by-the-family-or-the~~
22 ~~individual-to-provide-supports-or-services-is-not-a-direct~~
23 ~~service-provider-for-the-purpose-of-screening-~~

24 ~~(16)--"District"-means-a-service-district-of-the~~
25 ~~department-~~

26 ~~(13)(17)~~ "Domicile" means the place where a client
27 legally resides, which place is his or her permanent home.
28 Domicile may be established as provided in s. 222.17.
29 Domicile may not be established in Florida by a minor who has
30 no parent domiciled in Florida, or by a minor who has no legal
31

1 guardian domiciled in Florida, or by any alien not classified
2 as a resident alien.

3 (14)~~(18)~~ "Enclave" means a work station in public or
4 private business or industry where a small group of persons
5 with developmental disabilities is employed and receives
6 training and support services or follow-along services among
7 nonhandicapped workers.

8 (15)~~(19)~~ "Epilepsy" means a chronic brain disorder of
9 various causes which is characterized by recurrent seizures
10 due to excessive discharge of cerebral neurons. When found
11 concurrently with retardation, autism, or cerebral palsy,
12 epilepsy is considered a secondary disability for which the
13 client is eligible to receive services to ameliorate this
14 condition pursuant ~~according to the-provisions-of~~ this
15 chapter.

16 (16)~~(20)~~ "Express and informed consent" means consent
17 voluntarily given in writing with sufficient knowledge and
18 comprehension of the subject matter involved to enable the
19 person giving consent to make an understanding and enlightened
20 decision without any element of force, fraud, deceit, duress,
21 or other form of constraint or coercion.

22 (17)~~(21)~~ "Family care program" means the program
23 established in s. 393.068 ~~an-alternative-to-residential~~
24 ~~placement;-in-which-a-direct-service-provider-provides-a-home~~
25 ~~for-a-client-and-assists-him-or-her-to-the-extent-necessary~~
26 ~~for-the-client-to-participate-in-normal-activities-and-to-meet~~
27 ~~the-demands-of-daily-living.-The-program-provides-the-support~~
28 ~~needed-by-the-client's-family-or-caretaker-to-meet-the~~
29 ~~individual-needs-of-the-client.~~

30 (18)~~(22)~~ "Follow-along services" means those support
31 services ~~which-shall-be~~ provided to persons with developmental

1 disabilities in all supported employment programs and may
2 include, but are not limited to, family support, assistance in
3 meeting transportation and medical needs, employer
4 intervention, performance evaluation, advocacy, replacement,
5 retraining or promotional assistance, or other similar support
6 services.

7 (19)~~(23)~~ "Foster care facility" means a residential
8 facility which provides a family living environment including
9 supervision and care necessary to meet the physical,
10 emotional, and social needs of its residents. The capacity of
11 such a facility shall not be more than three residents.

12 (20)~~(24)~~ "Group home facility" means a residential
13 facility which provides a family living environment including
14 supervision and care necessary to meet the physical,
15 emotional, and social needs of its residents. The capacity of
16 such a facility shall be at least 4 residents but not more
17 than 15 residents. For the purposes of this chapter, group
18 home facilities shall not be considered commercial
19 enterprises.

20 (21)~~(25)~~ "Guardian advocate" means a person appointed
21 by the circuit court to represent a person with developmental
22 disabilities in any proceedings brought pursuant to s. 393.12,
23 and excludes the use of the same term as applied to a guardian
24 advocate for mentally ill persons in chapter 394.

25 (22)~~(26)~~ "Habilitation" means the process by which a
26 client is assisted to acquire and maintain those life skills
27 which enable the client to cope more effectively with the
28 demands of his or her condition and environment and to raise
29 the level of his or her physical, mental, and social
30 efficiency. It includes, but is not limited to, programs of
31 formal structured education and treatment.

1 ~~(23)~~~~(27)~~ "High-risk child" means, for the purposes of
2 this chapter, a child from birth to 5 years of age with one or
3 more of the following characteristics:

4 (a) A developmental delay in cognition, language, or
5 physical development.

6 (b) A child surviving a catastrophic infectious or
7 traumatic illness known to be associated with developmental
8 delay, when funds are specifically appropriated.

9 (c) A child with a parent or guardian with
10 developmental disabilities ~~who-is-developmentally-disabled-and~~
11 who requires assistance in meeting the child's developmental
12 needs.

13 (d) A child who has a physical or genetic anomaly
14 associated with developmental disability.

15 ~~(24)~~~~(28)~~ "Intermediate care facility for the
16 developmentally disabled" or "ICF/DD" means a residential
17 facility licensed and certified pursuant to part XI of chapter
18 400 in accordance with state law, and certified by the Federal
19 Government pursuant to the Social Security Act, as a provider
20 of Medicaid services to persons who are developmentally
21 disabled. The capacity of such a facility shall not be more
22 than 120 clients.

23 ~~(25)~~~~(29)~~ "Job coach" means a person who provides
24 employment-related training at a work site to individuals with
25 developmental disabilities.

26 ~~(26)~~~~(30)~~ "Medical/dental services" means medically
27 necessary these services which are provided or ordered for a
28 client by a person licensed physician or dentist and includes
29 pursuant to the provisions of chapter 458, chapter 459, or
30 chapter 466. Such services may include, but are not limited
31 to, prescription drugs, specialized therapies, nursing

1 supervision, hospitalization, dietary services, prosthetic
2 devices, surgery, specialized equipment and supplies, adaptive
3 equipment, and other services as required to prevent or
4 alleviate a medical or dental condition.

5 (27)~~(31)~~ "Mobile work crew" means a group of workers
6 employed by an agency that provides services outside the
7 agency, usually under service contracts.

8 (28)~~(32)~~ "Normalization principle" means the principle
9 of letting the client obtain an existence as close to the
10 normal as possible, making available to the client patterns
11 and conditions of everyday life which are as close as possible
12 to the norm and patterns of the mainstream of society.

13 (29)~~(33)~~ "Personal services" include, but are not
14 limited to, such services as: individual assistance with or
15 supervision of essential activities of daily living for
16 self-care, including ambulation, bathing, dressing, eating,
17 grooming, and toileting, and other similar services that ~~which~~
18 the agency ~~department~~ may define by rule. "Personal services"
19 shall not be construed to mean the provision of medical,
20 nursing, dental, or mental health services by the staff of a
21 facility, except as provided in this chapter. In addition, an
22 emergency response device installed in the apartment or living
23 area of a resident shall not be classified as a personal
24 service.

25 (30)~~(34)~~ "Prader-Willi syndrome" means an inherited
26 condition typified by neonatal hypotonia with failure to
27 thrive, hyperphagia or an excessive drive to eat which leads
28 to obesity usually at 18 to 36 months of age, mild to moderate
29 retardation, hypogonadism, short stature, mild facial
30 dysmorphism, and a characteristic neurobehavior.

1 (31)~~(35)~~ "Reassessment" means a process which
2 periodically develops, through annual review and revision of a
3 client's family or individual support plan, a knowledgeable
4 statement of current needs and past development for each
5 client.

6 ~~(36)--"Rehabilitation-workshop-facility"-means-a-place~~
7 ~~operated-by-a-for-profit-or-nonprofit-agency-engaged-in-the~~
8 ~~manufacture-or-production-of-products-or-provision-of~~
9 ~~services,-which-provides-gainful-rehabilitation-to-severely~~
10 ~~handicapped-persons-until-such-persons-can-become-employed-or~~
11 ~~which-provides-gainful-work-to-persons-who-are-developmentally~~
12 ~~disabled-~~

13 (32)~~(37)~~ "Relative" means an individual who is
14 connected by affinity or consanguinity to the client and who
15 is 18 years of age or more.

16 (33)~~(38)~~ "Resident" means any person who is
17 developmentally disabled residing at a residential facility in
18 the state, whether or not such person is a client of the
19 agency department.

20 (34)~~(39)~~ "Residential facility" means a facility
21 providing room and board and personal care for persons with
22 developmental disabilities.

23 (35) "Residential habilitation" means assistance
24 provided in a residential habitation center with acquisition,
25 retention, or improvement in skills related to activities of
26 daily living, such as personal grooming and cleanliness,
27 bedmaking and household chores, eating and the preparation of
28 food, and the social and adaptive skills necessary to enable
29 the individual to reside in a noninstitutional setting.

30 (36)~~(40)~~ "Residential habilitation center" means a
31 community residential facility that provides residential

1 habilitation. ~~operated-primarily-for-the-diagnosis,-treatment,~~
2 ~~habilitation,-or-rehabilitation-of-its-residents,-which~~
3 ~~facility-provides,-in-a-structured-residential-setting,~~
4 ~~individualized-continuing-evaluation,-planning,-24-hour~~
5 ~~supervision,-and-coordination-and-integration-of-health-or~~
6 ~~rehabilitative-services-to-help-each-resident-reach-his-or-her~~
7 ~~maximum-functioning-capabilities-~~ The capacity of such a
8 facility shall not be fewer ~~less~~ than nine residents. After
9 October 1, 1989, no new residential habilitation centers shall
10 be licensed and the licensed capacity shall not be increased
11 for any existing residential habilitation center.

12 ~~(37)~~(41) "Respite service" means appropriate,
13 short-term, temporary care that is provided to a person with
14 developmental disabilities to meet the planned or emergency
15 needs of the person ~~with-developmental-disabilities~~ or the
16 family or other direct service provider.

17 ~~(38)~~(42) "Retardation" means significantly subaverage
18 general intellectual functioning existing concurrently with
19 deficits in adaptive behavior and manifested during the period
20 from conception to age 18. "Significantly subaverage general
21 intellectual functioning," for the purpose of this definition,
22 means performance which is two or more standard deviations
23 from the mean score on a standardized intelligence test
24 specified in the rules of the agency ~~department~~. "Adaptive
25 behavior," for the purpose of this definition, means the
26 effectiveness or degree with which an individual meets the
27 standards of personal independence and social responsibility
28 expected of his or her age, cultural group, and community.

29 ~~(43)~~--"Screening,"-for-purposes-of-employment,-
30 contracting,-or-certification,-means-the-act-of-assessing-the
31 background-of-direct-service-providers-and-independent-support

1 coordinators, who are not related to clients for whom they
2 provide services, and includes, but is not limited to,
3 employment history checks, local criminal records checks
4 through local law enforcement agencies, fingerprinting for all
5 purposes and checks in this subsection, statewide criminal
6 records checks through the Department of Law Enforcement, and
7 federal criminal records checks through the Federal Bureau of
8 Investigation, except that screening for volunteers included
9 under the definition of personnel includes only local criminal
10 records checks through local law enforcement agencies for
11 current residence and residence immediately prior to
12 employment as a volunteer, if different, and statewide
13 criminal records correspondence checks through the Department
14 of Law Enforcement.

15 (39) ~~(44)~~ "Severe self-injurious behavior" means any
16 chronic behavior that results in injury to the person's own
17 body, which includes, but is not limited to, self-hitting,
18 head banging, self-biting, scratching, and the ingestion of
19 harmful or potentially harmful nutritive or nonnutritive
20 substances.

21 (40) ~~(45)~~ "Specialized therapies" means those
22 treatments or activities prescribed by and provided by an
23 appropriately trained, licensed, or certified professional or
24 staff person and may include, but are not limited to, physical
25 therapy, speech therapy, respiratory therapy, occupational
26 therapy, behavior therapy, physical management services, and
27 related specialized equipment and supplies.

28 (41) ~~(46)~~ "Spina bifida" means, for purposes of this
29 chapter, a person with a medical diagnosis of spina bifida
30 cystica or myelomeningocele.

1 (42)~~(47)~~ "Support coordinator" means a person who is
2 designated by the agency department to assist individuals and
3 families in identifying their ~~desires~~, capacities, needs, and
4 resources, as well as finding and gaining access to necessary
5 supports and services; coordinating the delivery of supports
6 and services; advocating on behalf of the individual and
7 family; maintaining relevant records; and monitoring and
8 evaluating the delivery of supports and services to determine
9 the extent to which they meet the needs and expectations
10 identified by the individual, family, and others who
11 participated in the development of the support plan.

12 (43)~~(48)~~ "Supported employee" means a person whose
13 ~~developmental-disability-has-traditionally-kept-him-or-her~~
14 ~~from-integrated,-community-based-employment-and~~ who requires
15 and receives supported employment ~~ongoing-support-or~~
16 ~~fellow-along~~ services in order to maintain community-based
17 employment.

18 (44)~~(49)~~ "Supported employment" means employment
19 located or provided in a normal employment setting which
20 provides at least 20 hours employment per week in an
21 integrated work setting, with earnings paid on a commensurate
22 wage basis, and for which continued support ~~is or-fellow-along~~
23 ~~services-are~~ needed for ~~continuing~~ job maintenance.

24 (45)~~(50)~~ "Supported living" means a category of
25 individually determined services designed and coordinated in
26 such a manner as to provide assistance to adult clients who
27 require ongoing supports to live as independently as possible
28 in their own homes, to be integrated into the community, and
29 to participate in community life to the fullest extent
30 possible.
31

1 ~~(46)~~(51) "Training" means a planned approach to
2 assisting a client to attain or maintain his or her maximum
3 potential and includes services ranging from sensory
4 stimulation to instruction in skills for independent living
5 and employment.

6 ~~(47)~~(52) "Treatment" means the prevention,
7 amelioration, or cure of a client's physical and mental
8 disabilities or illnesses.

9 Section 4. Subsections (1), (3), (4), and (5) of
10 section 393.064, Florida Statutes, are amended to read:

11 393.064 Prevention.--

12 (1) The agency ~~Department-of-Children-and-Family~~
13 ~~Services~~ shall give priority to the development, planning, and
14 implementation of programs which have the potential to
15 prevent, correct, cure, or reduce the severity of
16 developmental disabilities. The agency ~~department~~ shall
17 direct an interagency ~~interdepartmental~~ and interprogram
18 effort for the continued development of a prevention plan and
19 program. The agency ~~department~~ shall identify, through
20 demonstration projects, through ~~departmental~~ program
21 evaluation, and through monitoring of programs and projects
22 conducted outside of the agency ~~department~~, any medical,
23 social, economic, or educational methods, techniques, or
24 procedures that ~~which~~ have the potential to effectively
25 ameliorate, correct, or cure developmental disabilities. The
26 program ~~department~~ shall determine the costs and benefits that
27 would be associated with such prevention efforts and shall
28 implement, or recommend the implementation of, those methods,
29 techniques, or procedures which are found likely to be
30 cost-beneficial. ~~The-department-in-its-legislative-budget~~

1 ~~request-shall-identify-funding-needs-for-such-prevention~~
2 ~~programs-~~

3 (3) Other agencies of state government shall cooperate
4 with and assist the agency department, within available
5 resources, in implementing programs which have the potential
6 to prevent, or reduce the severity of, developmental
7 disabilities and shall consider the findings and
8 recommendations of the agency department in developing and
9 implementing agency programs and formulating agency budget
10 requests.

11 (4) There is created at the developmental services
12 institution in Gainesville a research and education unit.
13 Such unit shall be named the Raymond C. Philips Research and
14 Education Unit. The functions of such unit shall include:

15 (a) Research into the etiology of developmental
16 disabilities.

17 (b) Ensuring that new knowledge is rapidly
18 disseminated throughout the developmental services program of
19 the agency Department-of-Children-and-Family-Services.

20 (c) Diagnosis of unusual conditions and syndromes
21 associated with developmental disabilities in clients
22 identified throughout the developmental services programs.

23 (d) Evaluation of families of clients with
24 developmental disabilities of genetic origin in order to
25 provide them with genetic counseling aimed at preventing the
26 recurrence of the disorder in other family members.

27 (e) Ensuring that health professionals in the
28 developmental services institution at Gainesville have access
29 to information systems that will allow them to remain updated
30 on newer knowledge and maintain their postgraduate education
31 standards.

1 (f) Enhancing staff training for professionals
2 throughout the agency department in the areas of genetics and
3 developmental disabilities.

4 (5) The agency Department-of-Children-and-Family
5 Services shall have the authority, within available resources,
6 to contract for the supervision and management of the Raymond
7 C. Philips Research and Education Unit, and such contract
8 shall include specific program objectives.

9 Section 5. Section 393.0655, Florida Statutes, is
10 amended to read:

11 393.0655 Screening of direct service providers.--

12 (1) MINIMUM STANDARDS.--The agency department shall
13 require level 2 employment screening pursuant to chapter 435,
14 ~~using the level 2 standards for screening set forth in that~~
15 ~~chapter,~~ for direct service providers who are unrelated to
16 their clients, including support coordinators, and managers
17 and supervisors of residential facilities or comprehensive
18 transitional education programs licensed under s. 393.967 and
19 any other person, including volunteers, who provide care or
20 services, who have access to a client's living areas, or who
21 have access to a client's funds or personal property.
22 Background screening shall include employment history checks
23 as provided in s. 435.03(1) and local criminal records checks
24 through local law enforcement agencies.

25 (a) A volunteer who assists on an intermittent basis
26 for less than 40 hours per month does not have to be screened,
27 if the volunteer is under the direct and constant supervision
28 of persons who meet the screening requirements of this
29 section.

30 (b) Licensed physicians, nurses, or other
31 professionals licensed and regulated by the Department of

1 Health are not subject to background screening pursuant to
2 this section if they are providing a service that is within
3 their scope of licensed practice.

4 (c) A person selected by the family or the individual
5 with developmental disabilities and paid by the family or the
6 individual to provide supports or services is not required to
7 have a background screening under this section.

8 (d) Persons residing with the direct services
9 provider, including family members, who are 12 to 18 years of
10 age but shall be screened for delinquency records only.

11 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency
12 department may grant exemptions from disqualification from
13 working with children or adults with developmental
14 disabilities ~~the-developmentally-disabled~~ as provided in s.
15 435.07.

16 (3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE
17 CRIMINAL RECORDS CHECKS.--The costs of processing fingerprints
18 and the state criminal records checks shall be borne by the
19 employer or by the employee or individual who is being
20 screened.

21 (4) EXCLUSION FROM OWNING, OPERATING, OR BEING
22 EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL FACILITY;
23 HEARINGS PROVIDED.--

24 (a) The agency department shall deny, suspend,
25 terminate, or revoke a license, certification, rate agreement,
26 purchase order, or contract, or pursue other remedies provided
27 in s. 393.0673, s. 393.0675, or s. 393.0678 in addition to or
28 in lieu of denial, suspension, termination, or revocation for
29 failure to comply with this section.

30 (b) When the agency department has reasonable cause to
31 believe that grounds for denial or termination of employment

1 exist, it shall notify, in writing, the employer and the
2 direct service provider affected, stating the specific record
3 which indicates noncompliance with the standards in this
4 section.

5 (c) The procedures established for hearing under
6 chapter 120 shall be available to the employer and the direct
7 service provider in order to present evidence relating either
8 to the accuracy of the basis of exclusion or to the denial of
9 an exemption from disqualification.

10 (d) Refusal on the part of an employer to dismiss a
11 direct service provider who has been found to be in
12 noncompliance with standards of this section shall result in
13 automatic denial, termination, or revocation of the license,
14 certification, rate agreement, purchase order, or contract, in
15 addition to any other remedies pursued by the agency
16 department.

17 Section 6. Section 393.066, Florida Statutes, is
18 amended to read:

19 393.066 Community services and treatment for persons
20 who are developmentally disabled.--

21 (1) The agency ~~Department of Children and Family~~
22 ~~Services~~ shall plan, develop, organize, and implement its
23 programs of services and treatment for persons who are
24 developmentally disabled ~~along district lines.--The goal of~~
25 ~~such programs shall be~~ to allow clients to live as
26 independently as possible in their own homes or communities
27 and to achieve productive lives as close to normal as
28 possible.

29 ~~{2}--All programs of services and treatment for clients~~
30 ~~shall be administered through the districts and shall serve~~
31 ~~all clients regardless of the type of residential setting in~~

1 ~~which-the-client-lives-~~ All elements of community-based
2 services shall be made available, ~~in-each-service-district~~ and
3 eligibility for these services shall be consistent across the
4 state districts. In addition, all purchased services shall be
5 approved by the agency district.

6 (2)(3) All services needed shall be purchased instead
7 of provided directly by the agency department, when such
8 arrangement is more cost-efficient than having those services
9 provided directly by-the-department.

10 (3)(4) Community-based services that are medically
11 necessary to prevent institutionalization shall, to the extent
12 of available resources, include:

13 (a) Day habilitation services, including developmental
14 training services.

15 (b) Family care services.

16 (c) Guardian advocate referral services.

17 (d) Medical/dental services, except that medical
18 services shall not be provided to clients with spina bifida
19 except as specifically appropriated by the Legislature.

20 (e) Parent training.

21 (f) Recreation.

22 (g) Residential services.

23 (h) Respite services.

24 (i) Social services.

25 (j) Specialized therapies.

26 (k) Supported employment, including enclave, job
27 coach, mobile work crew, and follow-along services.

28 (l) Supported living.

29 (m) Training, including behavioral programming.

30 (n) Transportation.

31

1 (o) Other habilitative and rehabilitative services as
2 needed.

3
4 ~~Services-to-clients-with-spina-bifida-shall-not-include~~
5 ~~medical-services-except-as-appropriated-by-the-Legislature-~~

6 ~~(5)--Provided-it-is-consistent-with-the-intent-of-the~~
7 ~~Legislature,-the-department-shall-prioritize-increased~~
8 ~~appropriations-provided-for-community-based-services-for~~
9 ~~developmentally-disabled-individuals-toward-individualized,~~
10 ~~community-based-supports-and-services-for-consumers-and-their~~
11 ~~families.--Further,-the-department's-5-year-plan-for~~
12 ~~Developmental-Services-shall-reflect-a-priority-toward~~
13 ~~individualized,-community-based-supports-and-services-for~~
14 ~~consumers-and-their-families-~~

15 (4)~~(6)~~ The agency department shall utilize the
16 services of private businesses, not-for-profit organizations,
17 and units of local government whenever such services are more
18 cost-efficient than such services provided directly by the
19 department, including arrangements for provision of
20 residential facilities.

21 (5)~~(7)~~ In order to improve the potential for
22 utilization of more cost-effective, community-based
23 residential facilities, the agency department shall promote
24 the statewide development of day habilitation services for
25 clients who live with a direct service provider in a
26 community-based residential facility and who do not require
27 24-hour-a-day care in a hospital or other health care
28 institution, but who may, in the absence of day habilitation
29 services, require admission to a developmental disabilities
30 ~~services~~ institution. Each day service facility shall provide
31 a protective physical environment for clients, ensure that

1 direct service providers meet the minimum screening standards
2 ~~for-good-moral-character~~ as required contained in s. 393.0655,
3 make available to all day habilitation service participants at
4 least one meal on each day of operation, provide facilities to
5 enable participants to obtain needed rest while attending the
6 program, as appropriate, and provide social and educational
7 activities designed to stimulate interest and provide
8 socialization skills.

9 (6) To promote independence and productivity, the
10 agency shall provide supports and services, within available
11 resources, to assist clients enrolled in Medicaid waivers who
12 choose to pursue gainful employment.

13 (7)(8) For the purpose of making needed
14 community-based residential facilities available at the least
15 possible cost to the state, the agency department is
16 authorized to lease privately owned residential facilities
17 under long-term rental agreements, if such rental agreements
18 are projected to be less costly to the state over the useful
19 life of the facility than state purchase or state construction
20 of such a facility. ~~In-addition,-the-department-is-authorized~~
21 ~~to-permit,-on-any-public-land-to-which-the-department-holds~~
22 ~~the-lease,-construction-of-a-residential-facility-for-which~~
23 ~~the-department-has-entered-into-a-long-term-rental-agreement~~
24 ~~as-specified-in-this-subsection-~~

25 (8)(9) The agency department may adopt rules to ensure
26 compliance with federal laws or regulations that apply to
27 services provided pursuant to this section.

28 Section 7. Section 393.0661, Florida Statutes, is
29 amended to read:

30 393.0661 Home and community-based services delivery
31 system; comprehensive redesign.--The Legislature finds that

1 the home and community-based services delivery system for
2 persons with developmental disabilities and the availability
3 of appropriated funds are two of the critical elements in
4 making services available. Therefore, it is the intent of the
5 Legislature that the Agency for Persons with Disabilities
6 ~~Department-of-Children-and-Family-Services~~ shall develop and
7 implement a comprehensive redesign of the system. The redesign
8 of the home and community-based services system shall include,
9 at a minimum, all actions necessary to achieve an appropriate
10 rate structure, client choice within a specified service
11 package, appropriate assessment strategies, an efficient
12 billing process that contains reconciliation and monitoring
13 components, a redefined role for support coordinators that
14 avoids potential conflicts of interest, and family/client
15 budgets linked to levels of need. ~~Prior-to-the-release-of~~
16 ~~funds-in-the-lump-sum-appropriation,-the-department-shall~~
17 ~~present-a-plan-to-the-Executive-Office-of-the-Governor,-the~~
18 ~~House-Fiscal-Responsibility-Council,-and-the-Senate~~
19 ~~Appropriations-Committee.-The-plan-must-result-in-a-full~~
20 ~~implementation-of-the-redesigned-system-no-later-than-July-1,~~
21 ~~2003.--At-a-minimum,-the-plan-must-provide-that-the-portions~~
22 ~~related-to-direct-provider-enrollment-and-billing-will-be~~
23 ~~operational-no-later-than-March-31,-2003.--The-plan-must~~
24 ~~further-provide-that-a-more-effective-needs-assessment~~
25 ~~instrument-will-be-deployed-by-January-1,-2003,-and-that-all~~
26 ~~clients-will-be-assessed-with-this-device-by-June-30,-2003-~~

27 (1) In no event may The agency shall use department
28 select an assessment instrument without appropriate evidence
29 that is it will be reliable and valid for identifying the
30 support needs of individuals. ~~Once such evidence has been~~
31 ~~obtained,-however,-~~ The agency may contract with department

1 ~~shall-determine-the-feasibility-of-contracting-with-an~~
2 ~~external-vendor-to-apply-the-new-assessment-device-to-all~~
3 ~~clients-receiving-services-through-the-Medicaid-waiver--In~~
4 ~~lieu-of-using~~ an external vendor or,--the department may use
5 support coordinators to complete client ~~for-the~~ assessments if
6 it develops sufficient safeguards and training to ensure
7 ongoing ~~significantly-improve~~ the inter-rater reliability of
8 ~~the-support-coordinators-administering-the-assessment.~~

9 (2) The agency, with the concurrence of the Agency for
10 Health Care Administration, may contract for the determination
11 of medical necessity and establishment of individual budgets.

12 Section 8. Section 393.068, Florida Statutes, is
13 amended to read:

14 393.068 Family care program.--

15 (1) The family care program is established for the
16 purpose of providing services and support to families and
17 individuals with developmental disabilities in order to
18 maintain the individual in the home environment and avoid
19 costly out-of-home residential placement. ~~The-Legislature~~
20 ~~recognizes-the-importance-of-family-support-in-the-long-range~~
21 ~~success-of-deinstitutionalization-~~ Services and support
22 available to families and individuals with developmental
23 disabilities shall emphasize community living and enable
24 individuals with developmental disabilities to enjoy typical
25 lifestyles. ~~Support-and-flexibility-in-coordinating-support~~
26 ~~and-services-are-core-elements-in-caring-for-the-individual~~
27 ~~who-is-developmentally-disabled-~~ One way to accomplish this is
28 to recognize that families are the greatest resource available
29 to individuals who have developmental disabilities and ~~that~~
30 families must be supported in their role as primary care
31 givers.

(2) Services and support authorized under this program shall, to the extent of available resources, include the services listed under s. 393.066 ~~s.-393-066(4)~~ and, in addition, shall include, but not be limited to:

(a) Attendant care.

(b) Barrier-free modifications to the home.

(c) Home visitation by agency workers.

(d) In-home subsidies.

(e) Low-interest loans.

~~(f)--Parent-training-~~

~~(g)--Respite-care-~~

(f)(h) Modifications for vehicles used to transport the individual with a developmental disability.

(g)(i) Facilitated communication.

(h)(j) Family counseling.

(i)(k) Equipment and supplies.

(j)(l) Self-advocacy training.

(k)(m) Roommate services.

(l)(n) Integrated community activities.

(m)(o) Emergency services.

(n)(p) Support coordination.

(o) Supported employment.

(p)(q) Other support services as identified by the family or individual.

~~(2)--Provided-it-is-consistent-with-the-intent-of-the legislature,-the-department-shall-prioritize-increased appropriations-provided-for-family-based-services-for developmentally-disabled-individuals-toward-individualized, family-based-supports-and-services-for-consumers-and-their families.-Further,-the-department's-5-year-plan-for developmental-services-shall-reflect-a-priority-toward~~

1 ~~individualized,-family-based-supports-and-services-for~~
2 ~~consumers-and-their-families-~~

3 (3) When it is determined by the agency department to
4 be more cost-effective and in the best interest of the client
5 to maintain such client in the home of a direct service
6 provider, the parent or guardian of the client or, if
7 competent, the client may enroll the client in the family care
8 program. The direct service provider of a client enrolled in
9 the family care program shall be reimbursed according to a
10 rate schedule set by the agency department. In-home subsidies
11 cited in paragraph (1)(d) shall be provided according to s.
12 393.0695 and are not subject to any other payment method or
13 rate schedule provided for in this section.

14 (4) All existing community resources available to the
15 client shall be utilized to support program objectives.
16 Additional services may be incorporated into the program as
17 appropriate and to the extent that resources are available.
18 The agency department is authorized to accept gifts and grants
19 in order to carry out the program.

20 (5) The agency department may contract for the
21 provision of any portion of the services required by the
22 program, except for in-home subsidies cited in paragraph
23 (2)(d) ~~{+}{d}~~, which shall be provided pursuant to s.
24 393.0695. Otherwise, purchase of service contracts shall be
25 used whenever the services so provided are more cost-efficient
26 than those provided by the agency department.

27 (6) When possible, services shall be obtained under
28 the "Florida Comprehensive Annual Services Program Plan under
29 Title XX of the Social Security Act" and the "Florida Plan for
30 Medical Assistance under Title XIX of the Social Security
31 Act."

1 (7) To provide a range of personal services for the
2 client, the use of volunteers shall be maximized. The agency
3 ~~department~~ shall assure appropriate insurance coverage to
4 protect volunteers from personal liability while acting within
5 the scope of their volunteer assignments under the program.

6 ~~{8}--The department shall submit to the President of~~
7 ~~the Senate and the Speaker of the House of Representatives, as~~
8 ~~part of the biennial plan required by s. 393.14, an evaluation~~
9 ~~report summarizing the progress of the family care program.~~
10 ~~The report shall include the information and data necessary~~
11 ~~for an accurate analysis of the costs and benefits associated~~
12 ~~with the establishment and operation of the programs that were~~
13 ~~established.~~

14 Section 9. Subsections (1) and (3) of section
15 393.0695, Florida Statutes, are amended to read:

16 393.0695 Provision of in-home subsidies.--

17 (1) The agency may pay ~~department shall develop by~~
18 ~~October 1, 1991, a plan for paying~~ in-home subsidies to
19 clients enrolled in the family care program or supported
20 living when it is determined to be more cost-effective and in
21 the best interest of the client to provide a cash supplement
22 to the client's income to enable the client to remain in the
23 family home or the client's own home. Payments may be made to
24 the parent or guardian of the client or, if the client is
25 competent, directly to the client.

26 (3) In-home subsidies must be based on an individual
27 determination of need and must not exceed maximum amounts set
28 by the agency department and reassessed by the agency annually
29 ~~department quarterly.~~

30 Section 10. Subsection (1), paragraph (a) of
31 subsection (2), paragraph (a) of subsection (4), paragraphs

1 (a), (d), and (h) of subsection (5), paragraph (a) of
2 subsection (6), paragraphs (d) and (e) of subsection (8), and
3 subsection (13) of section 393.11, Florida Statutes, are
4 amended to read:

5 393.11 Involuntary admission to residential
6 services.--

7 (1) JURISDICTION.--When a person is mentally retarded
8 and requires involuntary admission to residential services
9 provided by the agency ~~developmental-services-program-of-the~~
10 ~~Department-of-Children-and-Family-Services~~, the circuit court
11 of the county in which the person resides shall have
12 jurisdiction to conduct a hearing and enter an order
13 involuntarily admitting the person in order that the person
14 may receive the care, treatment, habilitation, and
15 rehabilitation which the person needs. For the purpose of
16 identifying mental retardation, diagnostic capability shall be
17 established by ~~in-every-program-function-of~~ the agency
18 ~~department-in-the-districts,-including,-but-not-limited-to,~~
19 ~~programs-provided-by-children-and-families,-delinquency~~
20 ~~services,-alcohol,-drug-abuse,-and-mental-health,-and-economic~~
21 ~~services,-and-by-the-Department-of-Labor-and-Employment~~
22 ~~Security~~. Except as otherwise specified, the proceedings under
23 this section shall be governed by the Florida Rules of Civil
24 Procedure.

25 (2) PETITION.--

26 (a) A petition for involuntary admission to
27 residential services may be executed by a petitioning
28 commission. For proposed involuntary admission to residential
29 services arising out of chapter 916, the petition may be filed
30 by a petitioning commission, the agency ~~department~~, the state
31

1 attorney of the circuit from which the defendant was
2 committed, or the defendant's attorney.

3 (4) DEVELOPMENTAL SERVICES PARTICIPATION.--

4 (a) Upon receiving the petition, the court shall
5 immediately order the developmental services program of the
6 agency department to examine the person being considered for
7 involuntary admission to residential services.

8 (5) EXAMINING COMMITTEE.--

9 (a) Upon receiving the petition, the court shall
10 immediately appoint an examining committee to examine the
11 person being considered for involuntary admission to
12 residential services of the developmental services program of
13 the agency department.

14 (d) Members of the committee shall not be employees of
15 the agency department or be associated with each other in
16 practice or in employer-employee relationships. Members of
17 the committee shall not have served as members of the
18 petitioning commission. Members of the committee shall not be
19 employees of the members of the petitioning commission or be
20 associated in practice with members of the commission.

21 (h) The agency department shall develop and prescribe
22 by rule one or more standard forms to be used as a guide for
23 members of the examining committee.

24 (6) COUNSEL; GUARDIAN AD LITEM.--

25 (a) The person with mental retardation shall be
26 represented by counsel at all stages of the judicial
27 proceeding. In the event the person is indigent and cannot
28 afford counsel, the court shall appoint a public defender not
29 less than 20 working days before the scheduled hearing. The
30 person's counsel shall have full access to the records of the
31 service provider and the agency department. In all cases, the

1 attorney shall represent the rights and legal interests of the
2 person with mental retardation, regardless of who may initiate
3 the proceedings or pay the attorney's fee.

4 (8) ORDER.--

5 (d) If an order of involuntary admission to
6 residential services provided by the developmental services
7 program of the agency department is entered by the court, a
8 copy of the written order shall be served upon the person, the
9 person's counsel, the agency department, and the state
10 attorney and the person's defense counsel, if applicable. The
11 order of involuntary admission sent to the agency department
12 shall also be accompanied by a copy of the examining
13 committee's report and other reports contained in the court
14 file.

15 (e) Upon receiving the order, the agency department
16 shall, within 45 days, provide the court with a copy of the
17 person's family or individual support plan and copies of all
18 examinations and evaluations, outlining the treatment and
19 rehabilitative programs. The agency department shall document
20 that the person has been placed in the most appropriate, least
21 restrictive and cost-beneficial residential facility. A copy
22 of the family or individual support plan and other
23 examinations and evaluations shall be served upon the person
24 and the person's counsel at the same time the documents are
25 filed with the court.

26 (13) HABEAS CORPUS.--At any time and without notice,
27 any person involuntarily admitted to the developmental
28 services program of the agency department, or the person's
29 parent or legal guardian in his or her behalf, is entitled to
30 a writ of habeas corpus to question the cause, legality, and
31 appropriateness of the person's involuntary admission. Each

1 person, or the person's parent or legal guardian, shall
2 receive specific written notice of the right to petition for a
3 writ of habeas corpus at the time of his or her involuntary
4 placement.

5 Section 11. Paragraphs (a), (b), and (d) of subsection
6 (2), subsection (3), paragraphs (b), (g), (i), and (j) of
7 subsection (4), and subsection (6) of section 393.13, Florida
8 Statutes, are amended to read:

9 393.13 Personal treatment of persons who are
10 developmentally disabled.--

11 (2) LEGISLATIVE INTENT.--

12 (a) The Legislature finds and declares that the system
13 of care provided ~~which-the-state-provides~~ to individuals who
14 are developmentally disabled must be designed to meet the
15 needs of the clients as well as protect the integrity of their
16 legal and human rights. ~~Further,-the-current-system-of-care~~
17 ~~for-persons-who-are-developmentally-disabled-is-in-need-of~~
18 ~~substantial-improvement-in-order-to-provide-truly-meaningful~~
19 ~~treatment-and-habilitation-~~

20 (b) The Legislature further finds and declares that
21 the design and delivery of treatment and services to persons
22 who are developmentally disabled should be directed by the
23 principles of normalization and therefore should:

24 1. Abate the use of large institutions.

25 2. Continue the development of community-based
26 services which provide reasonable alternatives to
27 institutionalization in settings that are least restrictive to
28 the client.

29 3. Provide training and education to individuals who
30 are developmentally disabled which will maximize their
31 potential to lead independent and productive lives and which

1 will afford opportunities for outward mobility from
2 institutions.

3 4. Reduce the use of sheltered workshops and other
4 noncompetitive employment day activities and promote
5 opportunities for gainful employment for persons with
6 developmental disabilities who choose to seek such employment.

7 (d) It is the intent of the Legislature:

8 1. To articulate the existing legal and human rights
9 of persons who are developmentally disabled so that they may
10 be exercised and protected. Persons with developmental
11 disabilities shall have all the rights enjoyed by citizens of
12 the state and the United States.

13 2. To provide a mechanism for the identification,
14 evaluation, and treatment of persons with developmental
15 disabilities.

16 3. To divert those individuals from institutional
17 commitment who, by virtue of comprehensive assessment, can be
18 placed in less costly, more effective community environments
19 and programs.

20 ~~4.--To develop a plan which will indicate the most~~
21 ~~effective and efficient manner in which to implement treatment~~
22 ~~programs which are meaningful to individuals with~~
23 ~~developmental disabilities, while safeguarding and respecting~~
24 ~~the legal and human rights of such individuals.~~

25 4.5.--Once the plan developed under the provisions of
26 subparagraph 4--is presented to the Legislature, To fund
27 improvements in the program in accordance with the
28 availability of state resources and yearly priorities
29 determined by the Legislature.

1 5.6- To ensure that persons with developmental
2 disabilities receive treatment and habilitation which fosters
3 the developmental potential of the individual.

4 6.7- To provide programs for the proper habilitation
5 and treatment of persons with developmental disabilities which
6 shall include, but not be limited to, comprehensive
7 medical/dental care, education, recreation, specialized
8 therapies, training, social services, transportation,
9 guardianship, family care programs, day habilitation services,
10 and habilitative and rehabilitative services suited to the
11 needs of the individual regardless of age, degree of
12 disability, or handicapping condition. No person with
13 developmental disabilities shall be deprived of these
14 enumerated services by reason of inability to pay.

15 7.8- To fully effectuate the normalization principle
16 through the establishment of community services for persons
17 with developmental disabilities as a viable and practical
18 alternative to institutional care at each stage of individual
19 life development. If care in a residential facility becomes
20 necessary, it shall be in the least restrictive setting.

21 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL
22 DISABILITIES.--The rights described in this subsection shall
23 apply to all persons with developmental disabilities, whether
24 or not such persons are clients of the agency department.

25 (a) Persons with developmental disabilities shall have
26 a right to dignity, privacy, and humane care, including the
27 right to be free from sexual abuse in residential facilities.

28 (b) Persons with developmental disabilities shall have
29 the right to religious freedom and practice. Nothing shall
30 restrict or infringe on a person's right to religious
31 preference and practice.

1 (c) Persons with developmental disabilities shall
2 receive services, within available sources, which protect the
3 personal liberty of the individual and which are provided in
4 the least restrictive conditions necessary to achieve the
5 purpose of treatment.

6 (d) Persons who are developmentally disabled shall
7 have a right to participate in an appropriate program of
8 quality education and training services, within available
9 resources, regardless of chronological age or degree of
10 disability. Such persons may be provided with instruction in
11 sex education, marriage, and family planning.

12 (e) Persons who are developmentally disabled shall
13 have a right to social interaction and to participate in
14 community activities.

15 (f) Persons who are developmentally disabled shall
16 have a right to physical exercise and recreational
17 opportunities.

18 (g) Persons who are developmentally disabled shall
19 have a right to be free from harm, including unnecessary
20 physical, chemical, or mechanical restraint, isolation,
21 excessive medication, abuse, or neglect.

22 (h) Persons who are developmentally disabled shall
23 have a right to consent to or refuse treatment, subject to the
24 provisions of s. 393.12(2)(a) or chapter 744.

25 (i) No otherwise qualified person shall, by reason of
26 having a developmental disability, be excluded from
27 participation in, or be denied the benefits of, or be subject
28 to discrimination under, any program or activity which
29 receives public funds, and all prohibitions set forth under
30 any other statute shall be actionable under this statute.
31

1 (j) No otherwise qualified person shall, by reason of
2 having a developmental disability, be denied the right to vote
3 in public elections.

4 (4) CLIENT RIGHTS.--For purposes of this subsection,
5 the term "client," as defined in s. 393.063, shall also
6 include any person served in a facility licensed pursuant to
7 s. 393.067.

8 (b) Each client has the right to the possession and
9 use of his or her own clothing and personal effects, except in
10 those specific instances where the use of some of these items
11 as reinforcers is essential for training the client as part of
12 an appropriately approved behavioral program. The chief
13 administrator of the facility may take temporary custody of
14 such effects when it is essential to do so for medical or
15 safety reasons. Custody of such personal effects shall be
16 promptly recorded in the client's record, and a receipt for
17 such effects shall be immediately given to the client, if
18 competent, or the client's parent or legal guardian.

19 1. All money belonging to a client held by the agency
20 ~~department~~ shall be held in compliance with s. 402.17(2).

21 2. All interest on money received and held for the
22 personal use and benefit of a client shall be the property of
23 that client and shall not accrue to the general welfare of all
24 clients or be used to defray the cost of residential care.
25 Interest so accrued shall be used or conserved for the
26 personal use or benefit of the individual client as provided
27 in s. 402.17(2).

28 3. Upon the discharge or death of a client, a final
29 accounting shall be made of all personal effects and money
30 belonging to the client held by the agency ~~department~~. All
31

1 such personal effects and money, including interest, shall be
2 promptly turned over to the client or his or her heirs.

3 (g) No client shall be subjected to a treatment
4 program to eliminate bizarre or unusual behaviors without
5 first being examined by a physician who in his or her best
6 judgment determines that such behaviors are not organically
7 caused.

8 1. Treatment programs involving the use of noxious or
9 painful stimuli shall be prohibited.

10 2. All alleged violations of this paragraph shall be
11 reported immediately to the chief administrative officer of
12 the facility or the district administrator, the agency
13 ~~department~~ head, and the Florida local advocacy council. A
14 thorough investigation of each incident shall be conducted and
15 a written report of the finding and results of such
16 investigation shall be submitted to the chief administrative
17 officer of the facility or the district administrator and to
18 the agency ~~department~~ head within 24 hours of the occurrence
19 or discovery of the incident.

20 3. The agency ~~department~~ shall adopt ~~promulgate~~ by
21 rule a system for the oversight of behavioral programs. Such
22 system shall establish guidelines and procedures governing the
23 design, approval, implementation, and monitoring of all
24 behavioral programs involving clients. The system shall
25 ensure statewide and local review by committees of
26 professionals certified as behavior analysts pursuant to s.
27 393.17. No behavioral program shall be implemented unless
28 reviewed according to the rules established by the agency
29 ~~department~~ under this section. Nothing stated in this section
30 shall prohibit the review of programs by the Florida statewide
31 or local advocacy councils.

1 (i) Clients shall have the right to be free from
2 unnecessary physical, chemical, or mechanical restraint.
3 Restraints shall be employed only in emergencies or to protect
4 the client from imminent injury to himself or herself or
5 others. Restraints shall not be employed as punishment, for
6 the convenience of staff, or as a substitute for a
7 habilitative plan. Restraints shall impose the least possible
8 restrictions consistent with their purpose and shall be
9 removed when the emergency ends. Restraints shall not cause
10 physical injury to the client and shall be designed to allow
11 the greatest possible comfort.

12 1. Mechanical supports used in normative situations to
13 achieve proper body position and balance shall not be
14 considered restraints, but shall be prescriptively designed
15 and applied under the supervision of a qualified professional
16 with concern for principles of good body alignment,
17 circulation, and allowance for change of position.

18 2. Totally enclosed cribs and barred enclosures shall
19 be considered restraints.

20 3. Daily reports on the employment of physical,
21 chemical, or mechanical restraints by those specialists
22 authorized in the use of such restraints shall be made to the
23 appropriate chief administrator of the facility, and a monthly
24 summary of such reports shall be relayed to the district
25 administrator and the Florida local advocacy council. The
26 reports shall summarize all such cases of restraints, the type
27 used, the duration of usage, and the reasons therefor.
28 Districts shall submit districtwide quarterly reports of these
29 summaries to the state Developmental Disabilities Program
30 Office.
31

1 4. The agency department shall post a copy of the
2 rules adopted ~~promulgated~~ under this section in each living
3 unit of residential facilities. A copy of the rules adopted
4 ~~promulgated~~ under this section shall be given to all staff
5 members of licensed facilities and made a part of all
6 preservice and inservice training programs.

7 (j)1. Each client shall have a central record. The
8 record shall include data pertaining to admission and such
9 other information as may be required under rules of the agency
10 ~~department~~.

11 2. Unless waived by the client, if competent, or the
12 client's parent or legal guardian if the client is
13 incompetent, the client's central record shall be confidential
14 and exempt from the provisions of s. 119.07(1), and no part of
15 it shall be released except:

16 a. The record may be released to physicians,
17 attorneys, and government agencies having need of the record
18 to aid the client, as designated by the client, if competent,
19 or the client's parent or legal guardian, if the client is
20 incompetent.

21 b. The record shall be produced in response to a
22 subpoena or released to persons authorized by order of court,
23 excluding matters privileged by other provisions of law.

24 c. The record or any part thereof may be disclosed to
25 a qualified researcher, a staff member of the facility, or an
26 employee of the agency ~~department~~ when the administrator of
27 the facility or the director ~~secretary~~ of the agency
28 ~~department~~ deems it necessary for the treatment of the client,
29 maintenance of adequate records, compilation of treatment
30 data, or evaluation of programs.
31

1 d. Information from the records may be used for
2 statistical and research purposes if the information is
3 abstracted in such a way to protect the identity of
4 individuals. .

5 3. All central records for each client in residential
6 facilities shall be kept on uniform forms distributed by the
7 agency department. The central record shall accurately
8 summarize each client's history and present condition.

9 4. The client, if competent, or the client's parent or
10 legal guardian if the client is incompetent, shall be supplied
11 with a copy of the client's central record upon request.

12 (6) NOTICE OF RIGHTS.--Each person with developmental
13 disabilities, if competent, or parent or legal guardian of
14 such person if the person is incompetent, shall promptly
15 receive from the agency Department-of-Children-and-Family
16 Services or the Department of Education a written copy of this
17 act. Each person with developmental disabilities able to
18 comprehend shall be promptly informed, in the language or
19 other mode of communication which such person understands, of
20 the above legal rights of persons with developmental
21 disabilities.

22 Section 12. Section 393.17, Florida Statutes, is
23 amended to read:

24 393.17 Behavioral programs; certification of behavior
25 analysts;~~-fees.~~--The agency may recognize the certification of
26 behavior analysts awarded by a nonprofit corporation whose
27 mission is to meet professional credentialing needs identified
28 by behavior analysts, state governments, and consumers of
29 behavior analysis services and whose work has the support of
30 the Association for Behavior Analysis International. The
31 ~~department-shall-by-rule-implement-a-certification-program-to~~

1 ensure-that-qualified-persons-oversee-the-design-and
2 implementation-of-behavioral-programs-for-persons-who-are
3 developmentally-disabled.--Certification-and-recertification
4 minimum-standards-must-comply-with-departmental-rules-and-must
5 include,-for-initial-certification,-examination-of
6 competencies-in-applying-behavior-analysis-with-persons-who
7 are-developmentally-disabled-within-established-competency
8 clusters.--These-competency-clusters-shall-include,-but-not-be
9 limited-to,-behavioral-assessments,-observation-and-recording,
10 behavioral-program-development-and-monitoring,-and-other-areas
11 as-determined-by-professional-practitioners-of-behavior
12 analysis.--Fees-shall-be-charged-for-certification-not-to
13 exceed-the-cost-of-development-and-administration-of-the
14 examination-and-periodic-renewal-of-certification.--The
15 department-shall-establish-by-rule-the-procedures-for
16 certification-and-certification-renewal-

17 Section 13. Section 393.22, Florida Statutes, is
18 amended to read:

19 393.22 Transfer-of-appropriations;-barriers-to
20 services; Financial commitment to community services
21 programs.--

22 {1}--No-funds-appropriated-for-developmental-services
23 programs-shall-be-transferred-pursuant-to-s.-216-292,-unless
24 there-is-a-finding-by-the-secretary-that-treatment-programs
25 for-developmental-disabilities-will-not-be-adversely-affected
26 by-the-transfer-

27 {2}--Development-of-programs-for-other-disabilities
28 shall-not-effectuate-a-reduction-or-dilution-of-the-ongoing
29 financial-commitment-of-the-state-through-appropriations-for
30 programs-and-services-for-persons-with-mental-retardation,
31 cerebral-palsy,-autism,-or-spina-bifida-

1 ~~(3) In order to The-Department-of-Children-and-Family~~
2 ~~Services-and-the-Agency-for-Health-Care-Administration-jointly~~
3 ~~shall~~ ensure that whenever a number of persons move from an
4 institution serving persons with developmental disabilities
5 which is sufficient to allow an entire residential unit within
6 that institution to be closed, no less than 80 percent of the
7 direct costs of providing services to persons who had resided
8 in that unit shall be reallocated for community services.

9 Section 14. Section 393.502, Florida Statutes, is
10 amended to read:

11 393.502 Family care councils.--

12 (1) CREATION.--There shall be established and located
13 within each service area of the agency ~~district-of-the~~
14 department a ~~district~~ family care council.

15 (2) MEMBERSHIP.--

16 (a) Each local ~~district~~ family care council shall
17 consist of at least 10 and no more than 15 members recommended
18 by a majority vote of the local ~~district~~ family care council
19 and appointed by the Governor.

20 (b) At least three of the members of the council must
21 be consumers. One such member shall be a consumer who received
22 ~~developmental~~ services within the 4 years prior to the date of
23 recommendation, or the legal guardian of such a consumer. The
24 remainder of the council members shall be parents, guardians,
25 or siblings of persons with developmental disabilities who
26 qualify for ~~developmental~~ services pursuant to this chapter.

27 (c) A person who is currently serving on another board
28 or council of the agency ~~department~~ may not be appointed to a
29 local ~~district~~ family care council.

30 (d) Employees of the agency ~~department~~ are not
31 eligible to serve on a local ~~district~~ family care council.

1 (e) Persons related by consanguinity or affinity
2 within the third degree shall not serve on the same local
3 ~~district~~ family care council at the same time.

4 (f) A chair for the council shall be chosen by the
5 council members to serve for 1 year. A person may serve no
6 more than four 1-year terms as chair.

7 (3) TERMS; VACANCIES.--

8 (a) Council members shall be appointed for a 3-year
9 term, except as provided in subsection (8), and may be
10 reappointed to one additional term.

11 (b) A member who has served two consecutive terms
12 shall not be eligible to serve again until 12 months have
13 elapsed since ending his or her service on the local ~~district~~
14 council.

15 (c) Upon expiration of a term or in the case of any
16 other vacancy, the local ~~district~~ council shall, by majority
17 vote, recommend to the Governor for appointment a person for
18 each vacancy. ~~If-the-Governor-does-not-act-on-the-council's~~
19 ~~recommendations-within-45-days-after-receiving-them,-the~~
20 ~~persons-recommended-shall-be-considered-to-be-appointed-~~

21 (4) COMMITTEE APPOINTMENTS.--The chair of the local
22 ~~district~~ family care council may appoint persons to serve on
23 council committees. Such persons may include former members of
24 the council and persons not eligible to serve on the council.

25 (5) TRAINING.--

26 (a) The agency ~~department~~, in consultation with the
27 local ~~district~~ councils, shall establish a training program
28 for local ~~district~~ family care council members. Each local
29 area ~~district~~ shall provide the training program when new
30 persons are appointed to the local ~~district~~ council and at
31 other times as the secretary deems necessary.

1 (b) The training shall assist the council members to
2 understand the laws, rules, and policies applicable to their
3 duties and responsibilities.

4 (c) All persons appointed to a local district council
5 must complete this training within 90 days after their
6 appointment. A person who fails to meet this requirement shall
7 be considered to have resigned from the council.

8 (6) MEETINGS.--Council members shall serve on a
9 voluntary basis without payment for their services but shall
10 be reimbursed for per diem and travel expenses as provided for
11 in s. 112.061. The council shall meet at least six times per
12 year.

13 (7) PURPOSE.--The purpose of the local district family
14 care councils shall be to advise the agency department-and-its
15 district-advisory-boards, to develop a plan for the delivery
16 of developmental-services family support services within the
17 local area district, and to monitor the implementation and
18 effectiveness of services and support provided under the plan.
19 The primary functions of the local district family care
20 councils shall be to:

21 (a) Assist in providing information and outreach to
22 families.

23 (b) Review the effectiveness of service developmental
24 services programs and make recommendations with respect to
25 program implementation.

26 (c) Advise the agency district-developmental-services
27 administrators with respect to policy issues relevant to the
28 community and family support system in the local area
29 district.

30 (d) Meet and share information with other local
31 district family care councils.

1 (8) NEW COUNCILS.--When a local ~~district~~ family care
2 council is established for the first time in a local area
3 ~~district~~, the Governor shall appoint the first four council
4 members, who shall serve 3-year terms. These members shall
5 submit to the Governor, within 90 days after their
6 appointment, recommendations for at least six additional
7 members, selected by majority vote. ~~If-the-Governor-does-not~~
8 ~~act-on-the-recommendations-within-45-days-after-receiving~~
9 ~~them,-the-persons-recommended-shall-be-considered-to-be~~
10 ~~appointed--Those-members-recommended-for-appointment-by-the~~
11 ~~Governor-shall-serve-for-2-years-~~

12 (9) FUNDING; FINANCIAL REVIEW.--The local ~~district~~
13 family care council may apply for, receive, and accept grants,
14 gifts, donations, bequests, and other payments from any public
15 or private entity or person. Each local ~~district~~ council is
16 ~~shall-be~~ subject to an annual financial review by ~~district~~
17 staff assigned by the agency ~~district-administrator~~. Each
18 local ~~district~~ council shall exercise care and prudence in the
19 expenditure of funds. The local ~~district~~ family care councils
20 shall comply with state expenditure requirements.

21 Section 15. Section 408.301, Florida Statutes, is
22 amended to read:

23 408.301 Legislative findings.--The Legislature has
24 found that access to quality, affordable, health care for all
25 Floridians is an important goal for the state. The Legislature
26 recognizes that there are Floridians with special health care
27 and social needs which require particular attention. The
28 people served by the Department of Children and Family
29 Services, the Agency for Persons with Disabilities, and the
30 Department of Health, and the Department of Elderly Affairs
31 are examples of citizens with special needs. The Legislature

1 further recognizes that the Medicaid program is an intricate
2 part of the service delivery system for the special needs
3 citizens ~~served-by-or-through-the-Department-of-Children-and~~
4 ~~Family-Services-and-the-Department-of-Health.~~ However, the
5 Agency for Health Care Administration is not a service
6 provider and does not develop or direct programs for the
7 special needs citizens ~~served-by-or-through-the-Department-of~~
8 ~~Children-and-Family-Services-and-the-Department-of-Health.~~
9 Therefore, it is the intent of the Legislature that the Agency
10 for Health Care Administration work closely with the
11 Department of Children and Family Services, the Agency for
12 Persons with Disabilities, and the Department of Health, and
13 the Department of Elderly Affairs in developing plans for
14 assuring access to all Floridians in order to assure that the
15 needs of special citizens are met.

16 Section 16. Section 408.302, Florida Statutes, is
17 amended to read:

18 408.302 Interagency agreement.--

19 (1) The Agency for Health Care Administration shall
20 enter into an interagency agreement with the Department of
21 Children and Family Services, the Agency for Persons with
22 Disabilities, and the Department of Health, and the Department
23 of Elderly Affairs to assure coordination and cooperation in
24 serving special needs citizens. The agreement shall include
25 the requirement that the secretaries or directors ~~secretary~~ of
26 the Department of Children and Family Services, the Agency for
27 Persons with Disabilities, ~~and-the-secretary-of~~ the Department
28 of Health, and the Department of Elderly Affairs approve,
29 prior to adoption, any rule developed by the Agency for Health
30 Care Administration where such rule has a direct impact on the
31 mission of the respective state agencies ~~Department-of~~

1 ~~Children-and-Family-Services-and-the-Department-of-Health,~~
2 their programs, or their budgets.

3 (2) For rules which indirectly impact on the mission
4 of the Department of Children and Family Services, the Agency
5 for Persons with Disabilities, and the Department of Health,
6 and the Department of Elderly Affairs, their programs, or
7 their budgets, the concurrence of the respective secretaries
8 or directors ~~secretary-of-the-Department-of-Children-and~~
9 ~~Family-Services-and-the-secretary-of-the-Department-of-Health~~
10 on the rule is required.

11 (3) For all other rules developed by the Agency for
12 Health Care Administration, coordination with the Department
13 of Children and Family Services, the Agency for Persons with
14 Disabilities, and the Department of Health, and the Department
15 of Elderly Affairs is encouraged.

16 (4) The interagency agreement shall also include any
17 other provisions necessary to ensure a continued cooperative
18 working relationship between the Agency for Health Care
19 Administration and the Department of Children and Family
20 Services, the Agency for Persons with Disabilities, and the
21 Department of Health, and the Department of Elderly Affairs as
22 each strives to meet the needs of the citizens of Florida.

23 Section 17. Subsection (13) of section 409.906,
24 Florida Statutes, is amended to read:

25 409.906 Optional Medicaid services.--Subject to
26 specific appropriations, the agency may make payments for
27 services which are optional to the state under Title XIX of
28 the Social Security Act and are furnished by Medicaid
29 providers to recipients who are determined to be eligible on
30 the dates on which the services were provided. Any optional
31 service that is provided shall be provided only when medically

1 necessary and in accordance with state and federal law.
2 Optional services rendered by providers in mobile units to
3 Medicaid recipients may be restricted or prohibited by the
4 agency. Nothing in this section shall be construed to prevent
5 or limit the agency from adjusting fees, reimbursement rates,
6 lengths of stay, number of visits, or number of services, or
7 making any other adjustments necessary to comply with the
8 availability of moneys and any limitations or directions
9 provided for in the General Appropriations Act or chapter 216.
10 If necessary to safeguard the state's systems of providing
11 services to elderly and disabled persons and subject to the
12 notice and review provisions of s. 216.177, the Governor may
13 direct the Agency for Health Care Administration to amend the
14 Medicaid state plan to delete the optional Medicaid service
15 known as "Intermediate Care Facilities for the Developmentally
16 Disabled." Optional services may include:

17 (13) HOME AND COMMUNITY-BASED SERVICES.--The agency
18 may pay for home-based or community-based services that are
19 rendered to a recipient in accordance with a federally
20 approved waiver program. The agency may limit or eliminate
21 coverage for certain ~~Project-AIDS-Care-Waiver~~ services,
22 preauthorize high-cost or highly utilized services, or make
23 any other adjustments necessary to comply with any limitations
24 or directions provided for in the General Appropriations Act.

25 Section 18. Sections 393.14, 393.165, 393.166, and
26 393.505, Florida Statutes, are repealed.

27 Section 19. (1) Effective October 1, 2004, the
28 developmental disabilities program and the developmental
29 services institutions in the Department of Children and Family
30 Services shall be transferred to the Agency for Persons with
31

1 Disabilities by a type two transfer pursuant to section 20.06,
2 Florida Statutes. Prior to that date:

3 (a) The Agency for Persons with Disabilities and the
4 Department of Children and Family Services, in consultation
5 with the Department of Management Services, shall determine
6 the number of positions and resources within the department
7 dedicated to the developmental disabilities program which
8 shall be transferred to the agency and will develop an
9 agreement that delineates who within the department will
10 provide administrative support to the agency.

11 (b) The Director of the Agency for Persons with
12 Disabilities, in consultation with the Secretaries of the
13 Department of Children and Family Services and the Agency for
14 Health Care Administration or their designees, shall prepare a
15 transition plan that must address, at a minimum, building
16 leases, information support systems, cash ownership and
17 transfer, administrative support functions, inventory and
18 transfers of equipment and structures, expenditure transfers,
19 budget authority and positions, and certifications forward.
20 This plan shall be submitted by September 1, 2004, to the
21 Executive Office of the Governor, the President of the Senate,
22 and the Speaker of the House of Representatives.

23 (c) The Agency for Persons with Disabilities and the
24 Department of Children and Family Services shall work with the
25 Agency for Health Care Administration to develop a plan that
26 ensures that all of the necessary electronic and paper-based
27 data of the Developmental Disabilities program is accessible
28 to the Medicaid program and that all electronic records will
29 be migrated to a new data system that is compatible with the
30 Florida Medicaid Management Information System.
31

1 (d) The Agency for Persons with Disabilities and the
2 Agency for Health Care Administration shall develop a plan for
3 the orderly relocation of the noncentral-office staff of the
4 Agency for Persons with Disabilities to the area offices of
5 the Agency for Health Care Administration. Such plan shall
6 include a schedule that takes into consideration the
7 availability of space, the expiration of current leases, and
8 the initiation of new leases that can accommodate the
9 relocated staff, as well as appropriate reimbursement for
10 collocation costs, including office space and other operating
11 expenses.

12 (2) Effective October 1, 2004, the agency shall enter
13 into an interagency agreement with the Department of Children
14 and Family Services for the provision of the necessary
15 day-to-day administrative and operational needs of the agency,
16 including, but not limited to, personnel, purchasing,
17 information technology support, legal support, and other
18 related services. This interagency agreement shall continue
19 until the agency no longer requires the provision of services
20 through such agreement.

21 (3) This act does not affect the validity of any
22 judicial or administrative proceeding pending on October 30,
23 2004, and the Agency for Persons with Disabilities is
24 substituted as a real party in interest with respect to any
25 proceeding pending on that date which involves the
26 developmental services programs of the Department of Children
27 and Family Services.

28 Section 20. The Office of Program Policy Analysis and
29 Government Accountability shall identify and evaluate
30 statewide entities receiving state funding for the purpose of
31

1 addressing the interests of, but not directly providing
2 services for, persons with disabilities.

3 (1) The purpose of the analysis shall be to provide
4 information with respect to:

5 (a) The extent to which activities of these entities
6 are coordinated;

7 (b) The similarities and differences in the
8 organizational missions of these entities; and

9 (c) The amount of state funds provided to these
10 entities for the purpose of addressing the interests of
11 persons with disabilities, the uses of these funds, and
12 whether they duplicate the efforts of other private or
13 federally funded entities.

14 (2) The report shall be completed and provided to the
15 Governor and Legislature by December 2005.

16 Section 21. Subsection (1) of section 92.53, Florida
17 Statutes, is amended to read:

18 92.53 Videotaping of testimony of victim or witness
19 under age 16 or person with mental retardation.--

20 (1) On motion and hearing in camera and a finding that
21 there is a substantial likelihood that a victim or witness who
22 is under the age of 16 or who is a person with mental
23 retardation as defined in s. 393.063 ~~s. 393.063(42)~~ would
24 suffer at least moderate emotional or mental harm due to the
25 presence of the defendant if the child or person with mental
26 retardation is required to testify in open court, or that such
27 victim or witness is otherwise unavailable as defined in s.
28 90.804(1), the trial court may order the videotaping of the
29 testimony of the victim or witness in a case, whether civil or
30 criminal in nature, in which videotaped testimony is to be
31 utilized at trial in lieu of trial testimony in open court.

1 Section 22. Subsections (1), (2), and (3), paragraph
2 (i) of subsection (4), and subsections (5), (8), (9), (10),
3 (11), (12), (13), (14), and (17) of 393.067, Florida Statutes,
4 are amended to read:

5 393.067 Licensure of residential facilities and
6 comprehensive transitional education programs.--

7 (1) The agency department shall provide through its
8 licensing authority a system of provider qualifications,
9 standards, training criteria for meeting standards, and
10 monitoring for residential facilities and comprehensive
11 transitional education programs.

12 (2) The agency department shall conduct inspections
13 and reviews of residential facilities and comprehensive
14 transitional education programs annually.

15 (3) An application for a license for a residential
16 facility or a comprehensive transitional education program
17 shall be made to the agency Department-of-Children-and-Family
18 Services on a form furnished by it and shall be accompanied by
19 the appropriate license fee.

20 (4) The application shall be under oath and shall
21 contain the following:

22 (i) Such other information as the agency department
23 determines is necessary to carry out the provisions of this
24 chapter.

25 (5) The applicant shall submit evidence which
26 establishes the good moral character of the manager or
27 supervisor of the facility or program and the direct service
28 providers in the facility or program and its component centers
29 or units. A license may be issued if all the screening
30 materials have been timely submitted; however, a license may
31

1 not be issued or renewed if any of the direct service
2 providers have failed the screening required by s. 393.0655.

3 (a)1. A licensed residential facility or comprehensive
4 transitional education program which applies for renewal of
5 its license shall submit to the agency department a list of
6 direct service providers who have worked on a continuous basis
7 at the applicant facility or program since submitting
8 fingerprints to the agency or the Department of Children and
9 Family Services, identifying those direct service providers
10 for whom a written assurance of compliance was provided by the
11 agency or department and identifying those direct service
12 providers who have recently begun working at the facility or
13 program and are awaiting the results of the required
14 fingerprint check along with the date of the submission of
15 those fingerprints for processing. The agency department shall
16 by rule determine the frequency of requests to the Department
17 of Law Enforcement to run state criminal records checks for
18 such direct service providers except for those direct service
19 providers awaiting the results of initial fingerprint checks
20 for employment at the applicant facility or program. The
21 agency department shall review the records of the direct
22 service providers at the applicant facility or program with
23 respect to the crimes specified in s. 393.0655 and shall
24 notify the facility or program of its findings. When
25 disposition information is missing on a criminal record, it is
26 ~~shall be~~ the responsibility of the person being screened, upon
27 request of the agency department, to obtain and supply within
28 30 days the missing disposition information to the agency
29 department. Failure to supply the missing information within
30 30 days or to show reasonable efforts to obtain such
31 information shall result in automatic disqualification.

1 2. The applicant shall sign an affidavit under penalty
2 of perjury stating that all new direct service providers have
3 been fingerprinted and that the facility's or program's
4 remaining direct service providers have worked at the
5 applicant facility or program on a continuous basis since
6 being initially screened at that facility or program or have a
7 written assurance of compliance from the agency or department.

8 (b) As a prerequisite for issuance of the initial
9 license to a residential facility or comprehensive
10 transitional education program:

11 1. The applicant shall submit to the agency department
12 a complete set of fingerprints, taken by an authorized law
13 enforcement agency or an employee of the agency department who
14 is trained to take fingerprints, for the manager, supervisor,
15 or direct service providers of the facility or program;

16 2. The agency department shall submit the fingerprints
17 to the Department of Law Enforcement for state processing and
18 for federal processing by the Federal Bureau of Investigation;
19 and

20 3. The agency department shall review the record of
21 the manager or supervisor with respect to the crimes specified
22 in s. 393.0655(1) and shall notify the applicant of its
23 findings. When disposition information is missing on a
24 criminal record, it is ~~shall be~~ the responsibility of the
25 manager or supervisor, upon request of the agency department,
26 to obtain and supply within 30 days the missing disposition
27 information to the agency department. Failure to supply the
28 missing information within 30 days or to show reasonable
29 efforts to obtain such information shall result in automatic
30 disqualification.
31

1 (c) The agency department or a residential facility or
2 comprehensive transitional education program may not use the
3 criminal records or juvenile records of a person obtained
4 under this subsection for any purpose other than determining
5 if that person meets the minimum standards for good moral
6 character for a manager or supervisor of, or direct service
7 provider in, such a facility or program. The criminal records
8 or juvenile records obtained by the agency department or a
9 residential facility or comprehensive transitional education
10 program for determining the moral character of a manager,
11 supervisor, or direct service provider are exempt from s.
12 119.07(1).

13 (8) The agency department shall adopt ~~promulgate~~ rules
14 establishing minimum standards for licensure of residential
15 facilities and comprehensive transitional education programs,
16 including rules requiring facilities and programs to train
17 staff to detect and prevent sexual abuse of residents and
18 clients, minimum standards of quality and adequacy of care,
19 and uniform firesafety standards established by the State Fire
20 Marshal which are appropriate to the size of the facility or
21 of the component centers or units of the program.

22 (9) The agency department and the Agency for Health
23 Care Administration, after consultation with the Department of
24 Community Affairs, shall adopt rules for residential
25 facilities under the respective regulatory jurisdiction of
26 each establishing minimum standards for the preparation and
27 annual update of a comprehensive emergency management plan. At
28 a minimum, the rules must provide for plan components that
29 address emergency evacuation transportation; adequate
30 sheltering arrangements; postdisaster activities, including
31 emergency power, food, and water; postdisaster transportation;

1 supplies; staffing; emergency equipment; individual
2 identification of residents and transfer of records; and
3 responding to family inquiries. The comprehensive emergency
4 management plan for all comprehensive transitional education
5 programs and for homes serving individuals who have complex
6 medical conditions is subject to review and approval by the
7 local emergency management agency. During its review, the
8 local emergency management agency shall ensure that the
9 following agencies, at a minimum, are given the opportunity to
10 review the plan: the Agency for Health Care Administration,
11 the Agency for Persons with Disabilities ~~Department of~~
12 ~~Children and Family Services~~, and the Department of Community
13 Affairs. Also, appropriate volunteer organizations must be
14 given the opportunity to review the plan. The local emergency
15 management agency shall complete its review within 60 days and
16 either approve the plan or advise the facility of necessary
17 revisions.

18 (10) The agency ~~department~~ may conduct unannounced
19 inspections to determine compliance by residential facilities
20 and comprehensive transitional education programs with the
21 applicable provisions of this chapter and the rules adopted
22 pursuant hereto, including the rules adopted for training
23 staff of a facility or a program to detect and prevent sexual
24 abuse of residents and clients. The facility or program shall
25 make copies of inspection reports available to the public upon
26 request.

27 (11) An alternative living center and an independent
28 living education center, as defined in s. 393.063 ~~s.~~
29 ~~393-063(8)~~, shall be subject to the provisions of s. 419.001,
30 except that such centers shall be exempt from the
31 1,000-foot-radius requirement of s. 419.001(2) if:

1 (a) Such centers are located on a site zoned in a
2 manner so that all the component centers of a comprehensive
3 transition education center may be located thereon; or

4 (b) There are no more than three such centers within
5 said radius of 1,000 feet.

6 (12) Each residential facility or comprehensive
7 transitional education program licensed by the agency
8 ~~department~~ shall forward annually to the agency ~~department~~ a
9 true and accurate sworn statement of its costs of providing
10 care to clients funded by the agency ~~department~~.

11 (13) The agency ~~department~~ may audit the records of
12 any residential facility or comprehensive transitional
13 education program that ~~which~~ it has reason to believe may not
14 be in full compliance with the provisions of this section;
15 provided that, any financial audit of such facility or program
16 shall be limited to the records of clients funded by the
17 agency ~~department~~.

18 (14) The agency ~~department~~ shall establish, for the
19 purpose of control of licensure costs, a uniform management
20 information system and a uniform reporting system with uniform
21 definitions and reporting categories.

22 (17) The agency ~~department~~ shall not be required to
23 contract with new facilities licensed after October 1, 1989,
24 pursuant to this chapter. Pursuant to chapter 287, the agency
25 ~~department~~ shall continue to contract within available
26 resources for residential services with facilities licensed
27 prior to October 1, 1989, if such facilities comply with the
28 provisions of this chapter and all other applicable laws and
29 regulations.

30 Section 23. Subsection (9) of section 397.405, Florida
31 Statutes, is amended to read:

1 397.405 Exemptions from licensure.--The following are
2 exempt from the licensing provisions of this chapter:

3 (9) Facilities licensed under s. 393.063 ~~s. 393.063(8)~~
4 that, in addition to providing services to persons who are
5 developmentally disabled as defined therein, also provide
6 services to persons developmentally at risk as a consequence
7 of exposure to alcohol or other legal or illegal drugs while
8 in utero.

9
10 The exemptions from licensure in this section do not apply to
11 any service provider that receives an appropriation, grant, or
12 contract from the state to operate as a service provider as
13 defined in this chapter or to any substance abuse program
14 regulated pursuant to s. 397.406. Furthermore, this chapter
15 may not be construed to limit the practice of a physician
16 licensed under chapter 458 or chapter 459, a psychologist
17 licensed under chapter 490, or a psychotherapist licensed
18 under chapter 491 who provides substance abuse treatment, so
19 long as the physician, psychologist, or psychotherapist does
20 not represent to the public that he or she is a licensed
21 service provider and does not provide services to clients
22 pursuant to part V of this chapter. Failure to comply with any
23 requirement necessary to maintain an exempt status under this
24 section is a misdemeanor of the first degree, punishable as
25 provided in s. 775.082 or s. 775.083.

26 Section 24. Paragraph (b) of subsection (5) of section
27 400.464, Florida Statutes, is amended to read:

28 400.464 Home health agencies to be licensed;
29 expiration of license; exemptions; unlawful acts; penalties.--

30 (5) The following are exempt from the licensure
31 requirements of this part:

1 (b) Home health services provided by a state agency,
2 either directly or through a contractor with:

3 1. The Department of Elderly Affairs.

4 2. The Department of Health, a community health
5 center, or a rural health network that furnishes home visits
6 for the purpose of providing environmental assessments, case
7 management, health education, personal care services, family
8 planning, or followup treatment, or for the purpose of
9 monitoring and tracking disease.

10 3. Services provided to persons who have developmental
11 disabilities, as defined in s. 393.063 ~~s. 393.063(12)~~.

12 4. Companion and sitter organizations that were
13 registered under s. 400.509(1) on January 1, 1999, and were
14 authorized to provide personal services under s. 393.063(33)
15 under a developmental services provider certificate on January
16 1, 1999, may continue to provide such services to past,
17 present, and future clients of the organization who need such
18 services, notwithstanding the provisions of this act.

19 5. The Department of Children and Family Services.

20 Section 25. Paragraph (d) of subsection (1) of section
21 419.001, Florida Statutes, is amended to read:

22 419.001 Site selection of community residential
23 homes.--

24 (1) For the purposes of this section, the following
25 definitions shall apply:

26 (d) "Resident" means any of the following: a frail
27 elder as defined in s. 400.618; a physically disabled or
28 handicapped person as defined in s. 760.22(7)(a); a
29 developmentally disabled person as defined in s. 393.063 ~~s.~~
30 ~~393.063(12)~~; a nondangerous mentally ill person as defined in

31

1 s. 394.455(18); or a child as defined in s. 39.01(14), s.
2 984.03(9) or (12), or s. 985.03(8).

3 Section 26. Section 914.16, Florida Statutes, is
4 amended to read:

5 914.16 Child abuse and sexual abuse of victims under
6 age 16 or persons with mental retardation; limits on
7 interviews.--The chief judge of each judicial circuit, after
8 consultation with the state attorney and the public defender
9 for the judicial circuit, the appropriate chief law
10 enforcement officer, and any other person deemed appropriate
11 by the chief judge, shall provide by order reasonable limits
12 on the number of interviews that a victim of a violation of s.
13 794.011, s. 800.04, or s. 827.03 who is under 16 years of age
14 or a victim of a violation of s. 794.011, s. 800.02, s.
15 800.03, or s. 825.102 who is a person with mental retardation
16 as defined in s. 393.063 ~~s.-393-063(42)~~ must submit to for law
17 enforcement or discovery purposes. The order shall, to the
18 extent possible, protect the victim from the psychological
19 damage of repeated interrogations while preserving the rights
20 of the public, the victim, and the person charged with the
21 violation.

22 Section 27. Subsection (2) of section 914.17, Florida
23 Statutes, is amended to read:

24 914.17 Appointment of advocate for victims or
25 witnesses who are minors or persons with mental retardation.--

26 (2) An advocate shall be appointed by the court to
27 represent a person with mental retardation as defined in s.
28 393.063 ~~s.-393-063(42)~~ in any criminal proceeding if the
29 person with mental retardation is a victim of or witness to
30 abuse or neglect, or if the person with mental retardation is
31 a victim of a sexual offense or a witness to a sexual offense

1 committed against a minor or person with mental retardation.
2 The court may appoint an advocate in any other criminal
3 proceeding in which a person with mental retardation is
4 involved as either a victim or a witness. The advocate shall
5 have full access to all evidence and reports introduced during
6 the proceedings, may interview witnesses, may make
7 recommendations to the court, shall be noticed and have the
8 right to appear on behalf of the person with mental
9 retardation at all proceedings, and may request additional
10 examinations by medical doctors, psychiatrists, or
11 psychologists. It is the duty of the advocate to perform the
12 following services:

13 (a) To explain, in language understandable to the
14 person with mental retardation, all legal proceedings in which
15 the person shall be involved;

16 (b) To act, as a friend of the court, to advise the
17 judge, whenever appropriate, of the person with mental
18 retardation's ability to understand and cooperate with any
19 court proceedings; and

20 (c) To assist the person with mental retardation and
21 the person's family in coping with the emotional effects of
22 the crime and subsequent criminal proceedings in which the
23 person with mental retardation is involved.

24 Section 28. Subsection (1) of section 918.16, Florida
25 Statutes, is amended to read:

26 918.16 Sex offenses; testimony of person under age 16
27 or person with mental retardation; testimony of victim;
28 courtroom cleared; exceptions.--

29 (1) Except as provided in subsection (2), in the trial
30 of any case, civil or criminal, when any person under the age
31 of 16 or any person with mental retardation as defined in s.

1 393.063 ~~s.-393-063(42)~~ is testifying concerning any sex
2 offense, the court shall clear the courtroom of all persons
3 except parties to the cause and their immediate families or
4 guardians, attorneys and their secretaries, officers of the
5 court, jurors, newspaper reporters or broadcasters, court
6 reporters, and, at the request of the victim, victim or
7 witness advocates designated by the state attorney's office.

8 Section 29. Paragraph (a) of subsection (4) of section
9 943.0585, Florida Statutes, is amended to read:

10 943.0585 Court-ordered expunction of criminal history
11 records.--The courts of this state have jurisdiction over
12 their own procedures, including the maintenance, expunction,
13 and correction of judicial records containing criminal history
14 information to the extent such procedures are not inconsistent
15 with the conditions, responsibilities, and duties established
16 by this section. Any court of competent jurisdiction may order
17 a criminal justice agency to expunge the criminal history
18 record of a minor or an adult who complies with the
19 requirements of this section. The court shall not order a
20 criminal justice agency to expunge a criminal history record
21 until the person seeking to expunge a criminal history record
22 has applied for and received a certificate of eligibility for
23 expunction pursuant to subsection (2). A criminal history
24 record that relates to a violation of s. 787.025, chapter 794,
25 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
26 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
27 893.135, or a violation enumerated in s. 907.041 may not be
28 expunged, without regard to whether adjudication was withheld,
29 if the defendant was found guilty of or pled guilty or nolo
30 contendere to the offense, or if the defendant, as a minor,
31 was found to have committed, or pled guilty or nolo contendere

1 to committing, the offense as a delinquent act. The court may
2 only order expunction of a criminal history record pertaining
3 to one arrest or one incident of alleged criminal activity,
4 except as provided in this section. The court may, at its sole
5 discretion, order the expunction of a criminal history record
6 pertaining to more than one arrest if the additional arrests
7 directly relate to the original arrest. If the court intends
8 to order the expunction of records pertaining to such
9 additional arrests, such intent must be specified in the
10 order. A criminal justice agency may not expunge any record
11 pertaining to such additional arrests if the order to expunge
12 does not articulate the intention of the court to expunge a
13 record pertaining to more than one arrest. This section does
14 not prevent the court from ordering the expunction of only a
15 portion of a criminal history record pertaining to one arrest
16 or one incident of alleged criminal activity. Notwithstanding
17 any law to the contrary, a criminal justice agency may comply
18 with laws, court orders, and official requests of other
19 jurisdictions relating to expunction, correction, or
20 confidential handling of criminal history records or
21 information derived therefrom. This section does not confer
22 any right to the expunction of any criminal history record,
23 and any request for expunction of a criminal history record
24 may be denied at the sole discretion of the court.

25 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
26 criminal history record of a minor or an adult which is
27 ordered expunged by a court of competent jurisdiction pursuant
28 to this section must be physically destroyed or obliterated by
29 any criminal justice agency having custody of such record;
30 except that any criminal history record in the custody of the
31 department must be retained in all cases. A criminal history

1 record ordered expunged that is retained by the department is
 2 confidential and exempt from the provisions of s. 119.07(1)
 3 and s. 24(a), Art. I of the State Constitution and not
 4 available to any person or entity except upon order of a court
 5 of competent jurisdiction. A criminal justice agency may
 6 retain a notation indicating compliance with an order to
 7 expunge.

8 (a) The person who is the subject of a criminal
 9 history record that is expunged under this section or under
 10 other provisions of law, including former s. 893.14, former s.
 11 901.33, and former s. 943.058, may lawfully deny or fail to
 12 acknowledge the arrests covered by the expunged record, except
 13 when the subject of the record:

14 1. Is a candidate for employment with a criminal
 15 justice agency;

16 2. Is a defendant in a criminal prosecution;

17 3. Concurrently or subsequently petitions for relief
 18 under this section or s. 943.059;

19 4. Is a candidate for admission to The Florida Bar;

20 5. Is seeking to be employed or licensed by or to
 21 contract with the Department of Children and Family Services
 22 or the Department of Juvenile Justice or to be employed or
 23 used by such contractor or licensee in a sensitive position
 24 having direct contact with children, the developmentally
 25 disabled, the aged, or the elderly as provided in s.
 26 110.1127(3), s. 393.063 ~~s. 393.063(15)~~, s. 394.4572(1), s.
 27 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
 28 415.102(4), s. 985.407, or chapter 400; or

29 6. Is seeking to be employed or licensed by the Office
 30 of Teacher Education, Certification, Staff Development, and
 31 Professional Practices of the Department of Education, any

1 district school board, or any local governmental entity that
2 licenses child care facilities.

3 Section 30. Paragraph (a) of subsection (4) of section
4 943.059, Florida Statutes, is amended to read:

5 943.059 Court-ordered sealing of criminal history
6 records.--The courts of this state shall continue to have
7 jurisdiction over their own procedures, including the
8 maintenance, sealing, and correction of judicial records
9 containing criminal history information to the extent such
10 procedures are not inconsistent with the conditions,
11 responsibilities, and duties established by this section. Any
12 court of competent jurisdiction may order a criminal justice
13 agency to seal the criminal history record of a minor or an
14 adult who complies with the requirements of this section. The
15 court shall not order a criminal justice agency to seal a
16 criminal history record until the person seeking to seal a
17 criminal history record has applied for and received a
18 certificate of eligibility for sealing pursuant to subsection
19 (2). A criminal history record that relates to a violation of
20 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
21 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
22 s. 847.0145, s. 893.135, or a violation enumerated in s.
23 907.041 may not be sealed, without regard to whether
24 adjudication was withheld, if the defendant was found guilty
25 of or pled guilty or nolo contendere to the offense, or if the
26 defendant, as a minor, was found to have committed or pled
27 guilty or nolo contendere to committing the offense as a
28 delinquent act. The court may only order sealing of a criminal
29 history record pertaining to one arrest or one incident of
30 alleged criminal activity, except as provided in this section.
31 The court may, at its sole discretion, order the sealing of a

1 criminal history record pertaining to more than one arrest if
2 the additional arrests directly relate to the original arrest.
3 If the court intends to order the sealing of records
4 pertaining to such additional arrests, such intent must be
5 specified in the order. A criminal justice agency may not seal
6 any record pertaining to such additional arrests if the order
7 to seal does not articulate the intention of the court to seal
8 records pertaining to more than one arrest. This section does
9 not prevent the court from ordering the sealing of only a
10 portion of a criminal history record pertaining to one arrest
11 or one incident of alleged criminal activity. Notwithstanding
12 any law to the contrary, a criminal justice agency may comply
13 with laws, court orders, and official requests of other
14 jurisdictions relating to sealing, correction, or confidential
15 handling of criminal history records or information derived
16 therefrom. This section does not confer any right to the
17 sealing of any criminal history record, and any request for
18 sealing a criminal history record may be denied at the sole
19 discretion of the court.

20 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
21 criminal history record of a minor or an adult which is
22 ordered sealed by a court of competent jurisdiction pursuant
23 to this section is confidential and exempt from the provisions
24 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
25 and is available only to the person who is the subject of the
26 record, to the subject's attorney, to criminal justice
27 agencies for their respective criminal justice purposes, or to
28 those entities set forth in subparagraphs (a)1., 4., 5., and
29 6. for their respective licensing and employment purposes.

30 (a) The subject of a criminal history record sealed
31 under this section or under other provisions of law, including

former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s.

110.1127(3), s. 393.063 ~~s. 393.063(45)~~, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity which licenses child care facilities.

Section 31. Subsections (3) and (4) of section 393.0641, Florida Statutes, are amended to read:

393.0641 Program for the prevention and treatment of severe self-injurious behavior.--

(3) The agency ~~department~~ may contract for the provision of any portion or all of the services required by the program.

1 (4) The agency has ~~department-shall-have~~ the authority
2 to license this program and shall adopt ~~promulgate~~ rules to
3 implement the program.

4 Section 32. Section 393.065, Florida Statutes, is
5 amended to read:

6 393.065 Application and eligibility determination.--

7 (1) Application for services shall be made in writing
8 to the agency ~~Department-of-Children-and-Family-Services~~, in
9 the district in which the applicant resides. Employees of the
10 agency's ~~department's~~ developmental services program shall
11 review each applicant for eligibility within 45 days after the
12 date the application is signed for children under 6 years of
13 age and within 60 days after the date the application is
14 signed for all other applicants. When necessary to
15 definitively identify individual conditions or needs, the
16 agency ~~department~~ shall provide a comprehensive assessment.
17 Only individuals whose domicile is in Florida are ~~shall-be~~
18 eligible for services. Information accumulated by other
19 agencies, including professional reports and collateral data,
20 shall be considered in this process when available.

21 (2) In order to provide immediate services or crisis
22 intervention to applicants, the agency ~~department~~ shall
23 arrange for emergency eligibility determination, with a full
24 eligibility review to be accomplished within 45 days of the
25 emergency eligibility determination.

26 (3) The agency ~~department~~ shall notify each applicant,
27 in writing, of its eligibility decision. Any applicant
28 determined by the agency ~~department~~ to be ineligible for
29 developmental services has ~~shall-have~~ the right to appeal this
30 decision pursuant to ss. 120.569 and 120.57.
31

1 (4) The agency department shall assess the level of
2 need and medical necessity for prospective residents of
3 intermediate-care facilities for the developmentally disabled
4 after October 1, 1999. The agency department may enter into an
5 agreement with the Department of Elderly Affairs for its
6 Comprehensive Assessment and Review for Long-Term-Care
7 Services (CARES) program to conduct assessments to determine
8 the level of need and medical necessity for long-term-care
9 services under this chapter. To the extent permissible under
10 federal law, the assessments must be funded under Title XIX of
11 the Social Security Act.

12 Section 33. Section 393.0651, Florida Statutes, is
13 amended to read:

14 393.0651 Family or individual support plan.--The
15 agency department shall provide for an appropriate family
16 support plan for children ages birth to 18 years of age and an
17 individual support plan for each client. The parent or
18 guardian of the client or, if competent, the client, or, when
19 appropriate, the client advocate, shall be consulted in the
20 development of the plan and shall receive a copy of the plan.
21 Each plan shall include the most appropriate, least
22 restrictive, and most cost-beneficial environment for
23 accomplishment of the objectives for client progress and a
24 specification of all services authorized. The plan shall
25 include provisions for the most appropriate level of care for
26 the client. Within the specification of needs and services for
27 each client, when residential care is necessary, the agency
28 department shall move toward placement of clients in
29 residential facilities based within the client's community.
30 The ultimate goal of each plan, whenever possible, shall be to
31 enable the client to live a dignified life in the least

1 restrictive setting, be that in the home or in the community.
2 For children under 6 years of age, the family support plan
3 shall be developed within the 45-day application period as
4 specified in s. 393.065(1); for all applicants 6 years of age
5 or older, the family or individual support plan shall be
6 developed within the 60-day period as specified in that
7 subsection.

8 (1) The agency department shall develop and specify by
9 rule the core components of support plans to be used by each
10 district.

11 (2)(a) The family or individual support plan shall be
12 integrated with the individual education plan (IEP) for all
13 clients who are public school students entitled to a free
14 appropriate public education under the Individuals with
15 Disabilities Education Act, I.D.E.A., as amended. The family
16 or individual support plan and IEP shall be implemented to
17 maximize the attainment of educational and habilitation goals.
18 If the IEP for a student enrolled in a public school program
19 indicates placement in a public or private residential program
20 is necessary to provide special education and related services
21 to a client, the local education agency shall provide for the
22 costs of that service in accordance with the requirements of
23 the Individuals with Disabilities Education Act, I.D.E.A., as
24 amended. This shall not preclude local education agencies and
25 the agency department from sharing the residential service
26 costs of students who are clients and require residential
27 placement. Under no circumstances shall clients entitled to a
28 public education or their parents be assessed a fee by the
29 agency department under s. 402.33 for placement in a
30 residential program.
31

1 (b) For clients who are entering or exiting the school
2 system, an interdepartmental staffing team composed of
3 representatives of the agency department and the local school
4 system shall develop a written transitional living and
5 training plan with the participation of the client or with the
6 parent or guardian of the client, or the client advocate, as
7 appropriate.

8 (3) Each family or individual support plan shall be
9 facilitated through case management designed solely to advance
10 the individual needs of the client.

11 (4) In the development of the family or individual
12 support plan, a client advocate may be appointed by the
13 support planning team for a client who is a minor or for a
14 client who is not capable of express and informed consent
15 when:

16 (a) The parent or guardian cannot be identified;

17 (b) The whereabouts of the parent or guardian cannot
18 be discovered; or

19 (c) The state is the only legal representative of the
20 client.

21
22 Such appointment shall not be construed to extend the powers
23 of the client advocate to include any of those powers
24 delegated by law to a legal guardian.

25 (5) The agency department shall place a client in the
26 most appropriate and least restrictive, and cost-beneficial,
27 residential facility according to his or her individual
28 habilitation plan. The parent or guardian of the client or, if
29 competent, the client, or, when appropriate, the client
30 advocate, and the administrator of the residential facility to
31 which placement is proposed shall be consulted in determining

1 the appropriate placement for the client. Considerations for
2 placement shall be made in the following order:

3 (a) Client's own home or the home of a family member
4 or direct service provider.

5 (b) Foster care facility.

6 (c) Group home facility.

7 (d) Intermediate care facility for the developmentally
8 disabled.

9 (e) Other facilities licensed by the agency department
10 which offer special programs for people with developmental
11 disabilities.

12 (f) Developmental services institution.

13 (6) In developing a client's annual family or
14 individual support plan, the individual or family with the
15 assistance of the support planning team shall identify
16 measurable objectives for client progress and shall specify a
17 time period expected for achievement of each objective.

18 (7) The individual, family, and support coordinator
19 shall review progress in achieving the objectives specified in
20 each client's family or individual support plan, and shall
21 revise the plan annually, following consultation with the
22 client, if competent, or with the parent or guardian of the
23 client, or, when appropriate, the client advocate. The agency
24 department shall annually report in writing to the client, if
25 competent, or to the parent or guardian of the client, or to
26 the client advocate, when appropriate, with respect to the
27 client's habilitative and medical progress.

28 (8) Any client, or any parent of a minor client, or
29 guardian, authorized guardian advocate, or client advocate for
30 a client, who is substantially affected by the client's
31 initial family or individual support plan, or the annual

1 review thereof, shall have the right to file a notice to
2 challenge the decision pursuant to ss. 120.569 and 120.57.
3 Notice of such right to appeal shall be included in all
4 support plans provided by the agency department.

5 Section 34. Section 393.0673, Florida Statutes, is
6 amended to read:

7 393.0673 Denial, suspension, revocation of license;
8 moratorium on admissions; administrative fines; procedures.--

9 (1) The agency ~~Department-of-Children-and-Family~~
10 ~~Services~~ may deny, revoke, or suspend a license or impose an
11 administrative fine, not to exceed \$1,000 per violation per
12 day, for a violation of any provision of s. 393.0655 or s.
13 393.067 or rules adopted pursuant thereto. All hearings shall
14 be held within the county in which the licensee or applicant
15 operates or applies for a license to operate a facility as
16 defined herein.

17 (2) The agency department, as a part of any final
18 order issued by it under the provisions of this chapter, may
19 impose such fine as it deems proper, except that such fine may
20 not exceed \$1,000 for each violation. Each day a violation of
21 this chapter occurs constitutes a separate violation and is
22 subject to a separate fine, but in no event may the aggregate
23 amount of any fine exceed \$10,000. Fines paid by any facility
24 licensee under the provisions of this subsection shall be
25 deposited in the Resident Protection Trust Fund and expended
26 as provided in s. 400.063.

27 (3) The agency department may issue an order
28 immediately suspending or revoking a license when it
29 determines that any condition in the facility presents a
30 danger to the health, safety, or welfare of the residents in
31 the facility.

1 (4) The agency ~~department~~ may impose an immediate
2 moratorium on admissions to any facility when the department
3 determines that any condition in the facility presents a
4 threat to the health, safety, or welfare of the residents in
5 the facility.

6 Section 35. Subsections (1) and (3) of section
7 393.0675, Florida Statutes, are amended to read:

8 393.0675 Injunctive proceedings authorized.--

9 (1) The agency ~~Department-of-Children-and-Family~~
10 ~~Services~~ may institute injunctive proceedings in a court of
11 competent jurisdiction to:

12 (a) Enforce the provisions of this chapter or any
13 minimum standard, rule, regulation, or order issued or entered
14 pursuant thereto; or

15 (b) Terminate the operation of facilities licensed
16 pursuant to this chapter when any of the following conditions
17 exist:

18 1. Failure by the facility to take preventive or
19 corrective measures in accordance with any order of the agency
20 ~~department~~.

21 2. Failure by the facility to abide by any final order
22 of the agency ~~department~~ once it has become effective and
23 binding.

24 3. Any violation by the facility constituting an
25 emergency requiring immediate action as provided in s.
26 393.0673.

27 (3) The agency ~~department~~ may institute proceedings
28 for an injunction in a court of competent jurisdiction to
29 terminate the operation of a provider of supports or services
30 if such provider has willfully and knowingly refused to comply
31 with the screening requirement for direct service providers or

1 has refused to terminate direct service providers found not to
2 be in compliance with the requirements for good moral
3 character.

4 Section 36. Subsection (1), paragraphs (b), (c), and
5 (d) of subsection (2), and paragraph (e) of subsection (3) of
6 section 393.0678, Florida Statutes, are amended to read:

7 393.0678 Receivership proceedings.--

8 (1) The agency department may petition a court of
9 competent jurisdiction for the appointment of a receiver for
10 an intermediate care facility for the developmentally
11 disabled, a residential habilitation center, or a group home
12 facility owned and operated by a corporation or partnership
13 when any of the following conditions exist:

14 (a) Any person is operating a facility without a
15 license and refuses to make application for a license as
16 required by s. 393.067 or, in the case of an intermediate care
17 facility for the developmentally disabled, as required by ss.
18 393.067 and 400.062.

19 (b) The licensee is closing the facility or has
20 informed the department that it intends to close the facility;
21 and adequate arrangements have not been made for relocation of
22 the residents within 7 days, exclusive of weekends and
23 holidays, of the closing of the facility.

24 (c) The agency department determines that conditions
25 exist in the facility which present an imminent danger to the
26 health, safety, or welfare of the residents of the facility or
27 which present a substantial probability that death or serious
28 physical harm would result therefrom. Whenever possible, the
29 agency department shall facilitate the continued operation of
30 the program.
31

1 (d) The licensee cannot meet its financial obligations
2 to provide food, shelter, care, and utilities. Evidence such
3 as the issuance of bad checks or the accumulation of
4 delinquent bills for such items as personnel salaries, food,
5 drugs, or utilities constitutes prima facie evidence that the
6 ownership of the facility lacks the financial ability to
7 operate the home in accordance with the requirements of this
8 chapter and all rules promulgated thereunder.

9 (2)

10 (b) A hearing shall be conducted within 5 days of the
11 filing of the petition, at which time all interested parties
12 shall have the opportunity to present evidence pertaining to
13 the petition. The agency department shall notify the owner or
14 operator of the facility named in the petition of its filing
15 and the date set for the hearing.

16 (c) The court shall grant the petition only upon
17 finding that the health, safety, or welfare of residents of
18 the facility would be threatened if a condition existing at
19 the time the petition was filed is permitted to continue. A
20 receiver may not be appointed ex parte unless the court
21 determines that one or more of the conditions in subsection
22 (1) exist; that the facility owner or operator cannot be
23 found; that all reasonable means of locating the owner or
24 operator and notifying him or her of the petition and hearing
25 have been exhausted; or that the owner or operator after
26 notification of the hearing chooses not to attend. After such
27 findings, the court may appoint any person qualified by
28 education, training, or experience to carry out the
29 responsibilities of receiver pursuant to this section, except
30 that the court may not appoint any owner or affiliate of the
31 facility which is in receivership. Before the appointment as

1 receiver of a person who is the operator, manager, or
2 supervisor of another facility, the court shall determine that
3 the person can reasonably operate, manage, or supervise more
4 than one facility. The receiver may be appointed for up to 90
5 days with the option of petitioning the court for 30-day
6 extensions. The receiver may be selected from a list of
7 persons qualified to act as receivers developed by the agency
8 ~~department~~ and presented to the court with each petition for
9 receivership. Under no circumstances may the agency ~~department~~
10 or designated agency ~~departmental~~ employee be appointed as a
11 receiver for more than 60 days; however, the agency
12 ~~departmental~~ receiver may petition the court for 30-day
13 extensions. The court shall grant an extension upon a showing
14 of good cause. The agency ~~department~~ may petition the court
15 to appoint a substitute receiver.

16 (d) During the first 60 days of the receivership, the
17 agency ~~department~~ may not take action to decertify or revoke
18 the license of a facility unless conditions causing imminent
19 danger to the health and welfare of the residents exist and a
20 receiver has been unable to remove those conditions. After
21 the first 60 days of receivership, and every 60 days
22 thereafter until the receivership is terminated, the agency
23 ~~department~~ shall submit to the court the results of an
24 assessment of the ability of the facility to assure the safety
25 and care of the residents. If the conditions at the facility
26 or the intentions of the owner indicate that the purpose of
27 the receivership is to close the facility rather than to
28 facilitate its continued operation, the agency ~~department~~
29 shall place the residents in appropriate alternate residential
30 settings as quickly as possible. If, in the opinion of the
31 court, the agency ~~department~~ has not been diligent in its

1 efforts to make adequate arrangements for placement, the court
2 shall find the agency department to be in contempt and shall
3 order the agency department to submit its plans for moving the
4 residents.

5 (3) The receiver shall make provisions for the
6 continued health, safety, and welfare of all residents of the
7 facility and:

8 (e) May use the building, fixtures, furnishings, and
9 any accompanying consumable goods in the provision of care and
10 services to residents and to any other persons receiving
11 services from the facility at the time the petition for
12 receivership was filed. The receiver shall collect payments
13 for all goods and services provided to residents or others
14 during the period of the receivership at the same rate of
15 payment charged by the owner at the time the petition for
16 receivership was filed, or at a fair and reasonable rate
17 otherwise approved by the court for private, paying residents.
18 The receiver may apply to the agency department for a rate
19 increase for residents under Title XIX of the Social Security
20 Act if the facility is not receiving the state reimbursement
21 cap and if expenditures justify an increase in the rate.

22 Section 37. Section 393.071, Florida Statutes, is
23 amended to read:

24 393.071 Client fees.--The agency Department-of
25 ~~Children-and-Family-Services~~ shall charge fees for services
26 provided to clients in accordance with s. 402.33.

27 Section 38. Subsection (2) of section 393.075, Florida
28 Statutes, is amended to read:

29 393.075 General liability coverage.--

30 (2) The Division of Risk Management of the Department
31 of Financial Services shall provide coverage through the

1 ~~agency~~ Department-of-Children-and-Family-Services to any
2 person who owns or operates a foster care facility or group
3 home facility solely for the ~~agency~~ Department-of-Children-and
4 Family-Services, who cares for children placed by
5 developmental services staff of the ~~agency~~ department, and who
6 is licensed pursuant to s. 393.067 to provide such supervision
7 and care in his or her place of residence. The coverage shall
8 be provided from the general liability account of the State
9 Risk Management Trust Fund. The coverage is limited to
10 general liability claims arising from the provision of
11 supervision and care of children in a foster care facility or
12 group home facility pursuant to an agreement with the ~~agency~~
13 department and pursuant to guidelines established through
14 policy, rule, or statute. Coverage shall be subject to the
15 limits provided in ss. 284.38 and 284.385, and the exclusions
16 set forth therein, together with other exclusions as may be
17 set forth in the certificate of coverage issued by the trust
18 fund. A person covered under the general liability account
19 pursuant to this subsection shall immediately notify the
20 Division of Risk Management of the Department of Financial
21 Services of any potential or actual claim.

22 Section 39. Section 393.115, Florida Statutes, is
23 amended to read:

24 393.115 Discharge.--

25 (1) DISCHARGE AT THE AGE OF MAJORITY.--

26 (a) When any residential client reaches his or her
27 18th birthday, the ~~agency~~ department shall give the resident
28 or legal guardian the option to continue residential services
29 or to be discharged from residential services.

30 (b) If the resident appears to meet the criteria for
31 involuntary admission to residential services, as defined in

1 s. 393.11, the agency department shall file a petition to
2 determine the appropriateness of continued residential
3 placement on an involuntary basis. The agency department shall
4 file the petition for involuntary admission in the county in
5 which the client resides. If the resident was originally
6 involuntarily admitted to residential services pursuant to s.
7 393.11, then the agency department shall file the petition in
8 the court having continuing jurisdiction over the case.

9 (c) Nothing in this section shall in any way limit or
10 restrict the resident's right to a writ of habeas corpus or
11 the right of the agency department to transfer a resident
12 receiving residential care to a program of appropriate
13 services provided by the agency department when such program
14 is the appropriate habilitative setting for the resident.

15 (2) DISCHARGE AFTER CRIMINAL OR JUVENILE
16 COMMITMENT.--Any person with developmental disabilities
17 committed to the custody of the agency department pursuant to
18 the provisions of the applicable criminal or juvenile court
19 law shall be discharged in accordance with the requirements of
20 the applicable criminal or juvenile court law.

21 Section 40. Subsection (3) of section 393.12, Florida
22 Statutes, is amended to read:

23 393.12 Capacity; appointment of guardian advocate.--

24 (3) COURT COSTS.--In all proceedings under this
25 section, no court costs shall be charged against the agency
26 department.

27 Section 41. Section 393.125, Florida Statutes, is
28 amended to read:

29 393.125 Hearing rights.--

30 (1) REVIEW OF AGENCY DEPARTMENT DECISIONS.--
31

1 (a) Any developmental services applicant or client, or
2 his or her parent, guardian, guardian advocate, or authorized
3 representative, who has any substantial interest determined by
4 the agency department, ~~has shall~~-have the right to request an
5 administrative hearing pursuant to ss. 120.569 and 120.57.

6 (b) Notice of the right to an administrative hearing
7 shall be given, both verbally and in writing, to the applicant
8 or client, and his or her parent, guardian, guardian advocate,
9 or authorized representative, at the same time that the agency
10 ~~department~~ gives the applicant or client notice of the
11 agency's department's action. The notice shall be given, both
12 verbally and in writing, in the language of the client or
13 applicant and in English.

14 (c) A request for a hearing under this section shall
15 be made to the agency department, in writing, within 30 days
16 of the applicant's or client's receipt of the notice.

17 (2) REVIEW OF PROVIDER DECISIONS.--The agency
18 ~~department~~ shall adopt promulgate rules to establish uniform
19 guidelines for the agency department and service providers
20 relevant to termination, suspension, or reduction of client
21 services by the service provider. The rules shall ensure the
22 due process rights of service providers and clients.

23 Section 42. Section 393.14, Florida Statutes, is
24 amended to read:

25 393.14 Multiyear plan.--

26 (1) The agency may department-is-authorized-to begin
27 implementation of the provisions of this act within the limits
28 of current appropriations. The agency department shall
29 develop a multiyear plan which will provide for the phased-in
30 implementation of the provisions of this act over the decade
31 following first presentation of the plan to the Legislature.

1 The multiyear plan for implementation shall be presented to
2 the Legislature by January 31, 1990, and every 2 years
3 thereafter. The plan shall include, but not be limited to:

4 (a) An analysis and inventory of existing programs,
5 facilities, and services dealing with persons who are
6 developmentally disabled.

7 (b) A survey and analysis outlining the needs of the
8 system of care for persons who are developmentally disabled to
9 accomplish the purpose and intent of this act. This analysis
10 shall include:

11 1. Comprehensive information relating to the
12 conceptual basis and statement of criteria which will be used
13 for the identification and categorization of all agency
14 ~~department~~ clients and the expected level and amount of
15 service each category of client will require.

16 2. A description of the present client population,
17 based on the above criteria.

18 3. Client population forecasts.

19 4. Client profiles.

20 5. Service area resources, needs, and capabilities.

21 6. Residential and nonresidential community programs.

22 7. An analysis of the future functions of institutions
23 and their profile.

24 8. An analysis of the financing necessary to implement
25 needs, which shall include a statement of the actual cost
26 necessary to implement each program and the actual cost of
27 each unit of service to the client for both institutional and
28 community placements.

29 9. A clear and detailed description of the needs of
30 persons waiting for services and the cost to the state in both
31

1 human and economic terms if those persons are not served
2 within the fiscal year the plan is submitted.

3 (c) A plan for the coordination of the state's
4 service, programs, and facilities for persons who are
5 developmentally disabled.

6 (d) A detailed study of methods to implement
7 alternatives to institutionalization and how those methods can
8 best be utilized.

9 (2) Every 2 years, commencing with the 1990 fiscal
10 year, the agency department shall render a written report to
11 the Legislature updating the plan, making recommendations for
12 modification or improvement, and giving a detailed analysis of
13 the manner and method, including funding, by which the
14 Legislature can continue to implement the overall goals of the
15 plan.

16 Section 43. Subsections (3), (4), (5), and (6) of
17 section 393.15, Florida Statutes, are amended to read:

18 393.15 Legislative intent; Community Resources
19 Development Trust Fund.--

20 (3) There is created a Community Resources Development
21 Trust Fund in the State Treasury to be used by the agency
22 ~~Department-of-Children-and-Family-Services~~ for the purpose of
23 granting loans to eligible programs for the initial costs of
24 development of the programs. Loans shall be made only to
25 those facilities which are in compliance with the zoning
26 regulations of the local community. Costs of development may
27 include structural modification, the purchase of equipment and
28 fire and safety devices, preoperational staff training, and
29 the purchase of insurance. Such costs shall not include the
30 actual construction of a facility.
31

1 (4) The agency department may grant to an eligible
2 program a lump-sum loan in one payment not to exceed the cost
3 to the program of providing 2 months' services, care, or
4 maintenance to each person who is developmentally disabled to
5 be placed in the program by the agency department, or the
6 actual cost of firesafety renovations to a facility required
7 by the state, whichever is greater. Loans granted to programs
8 shall not be in lieu of payment for maintenance, services, or
9 care provided, but shall stand separate and distinct. The
10 agency department shall adopt ~~promulgate~~ rules, as provided in
11 chapter 120, to determine the standards under which a program
12 shall be eligible to receive a loan as provided in this
13 section and criteria for the equitable allocation of loan
14 trust funds when eligible applications exceed the funds
15 available.

16 (5) Any loan granted by the agency department under
17 this section shall be repaid by the program within 5 years. A
18 program ~~that~~ which operates as a nonprofit corporation meeting
19 the requirements of s. 501(c)(3) of the Internal Revenue Code,
20 and ~~that~~ which seeks forgiveness of its loan shall submit to
21 the agency department a statement setting forth the service it
22 has provided during the year together with such other
23 information as the agency department by rule shall require,
24 and, upon approval of each such annual statement, the agency
25 ~~department~~ shall forgive 20 percent of the principal of any
26 such loan granted after June 30, 1975.

27 (6) If any program ~~that~~ which has received a loan
28 under this section ceases to accept, or provide care,
29 services, or maintenance to persons placed in the program by
30 the department, or if such program files ~~shall-file~~ papers of
31 bankruptcy, at that point in time the loan shall become an

1 interest-bearing loan at the rate of 5 percent per annum on
2 the entire amount of the initial loan which shall be repaid
3 within a 1-year period from the date on which the program
4 ceases to provide care, services, or maintenance, or files
5 papers in bankruptcy, and the amount of the loan due plus
6 interest shall constitute a lien in favor of the state against
7 all real and personal property of the program. The lien shall
8 be perfected by the appropriate officer of the agency
9 ~~department~~ by executing and acknowledging a statement of the
10 name of the program and the amount due on the loan and a copy
11 of the promissory note, which shall be recorded by the agency
12 ~~department~~ with the clerk of the circuit court in the county
13 wherein the program is located. If the program has filed a
14 petition for bankruptcy, the agency department shall file and
15 enforce the lien in the bankruptcy proceedings. Otherwise,
16 the lien shall be enforced in the manner provided in s.
17 85.011. All funds received by the agency department from the
18 enforcement of the lien shall be deposited in the Community
19 Resources Development Trust Fund.

20 Section 44. Subsection (1) of section 393.501, Florida
21 Statutes, is amended to read:

22 393.501 Rulemaking.--

23 (1) The agency department shall adopt rules to carry
24 out the provisions of this chapter.

25 Section 45. Section 393.503, Florida Statutes, is
26 amended to read:

27 393.503 Respite and family care subsidy expenditures;
28 funding.--The agency Department-of-Children-and-Family
29 ~~Services~~ shall determine the amount of expenditures per fiscal
30 year for the respite and family care subsidy to families and
31 individuals with developmental disabilities living in their

1 own homes. This information shall be made available to the
2 family care councils and to others requesting the information.
3 The family care councils shall review the expenditures and
4 make recommendations to the agency department with respect to
5 any new funds that are made available for family care.

6 Section 46. Subsection (2) of section 393.506, Florida
7 Statutes, is amended to read:

8 393.506 Administration of medication.--

9 (2) Each facility, institution, or program must
10 include in its policies and procedures a plan for training
11 designated staff to ensure the safe handling, storage, and
12 administration of prescription medication. These policies and
13 procedures must be approved by the agency department before
14 unlicensed direct care services staff assist with medication.

15 Section 47. Except as otherwise expressly provided in
16 this act, this act shall take effect July 1, 2004.

Bill No. *PCS for SB 1280*

Amendment No. ____

Senate

CHAMBER ACTION

House.
.
.
.
.
.

SENATE COMMITTEE CHILDREN AND FAMILIES

DATE: 4/12/04TIME: 11:30 a.m.

Senator Lynn moved the following amendment:

Senate Amendment

On page 24, lines 8-10, delete those lines

and insert:

(d) Persons residing with the direct services provider,
including family members, are subject to background screening;
however, such persons who are 12 to 18 years of age shall be
screened for delinquency records only.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2208

SPONSOR: Senator Wilson

SUBJECT: Family Day Care Homes/Restrictions

DATE: April 2, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds <i>DVD</i>	Whiddon <i>W</i>	CF	
2.			CP	
3.			JU	
4.			AHS	
5.			AP	
6.				

I. Summary:

Senate Bill 2208 prohibits a deed restriction, covenant, or other binding agreement from preventing or forbidding, either directly or indirectly, the use of a residential dwelling as a family day care home. Exceptions are provided for condominiums, timeshare properties, cooperatives, and for cases where prohibiting the family day care home is determined necessary for the health, safety, or welfare of the neighborhood residents. The bill sets forth legislative findings and intent for eliminating the use of deed restrictions, covenants, or other binding agreements to prohibit the establishment or operation of family day care homes.

This bill creates section 402.31302 of the Florida Statutes.

II. Present Situation:

Family day care homes are residences where child care is provided for between four and ten children, depending on the age of the children, from at least two unrelated families for a fee (s. 402.302(7), F.S.). These family day care homes are required to either be licensed (if there is a county licensing ordinance or county resolution requiring licensing) or registered (s. 402.313(1), F.S.). Minimum licensing standards relative to staffing, training, immunization records, health, and enforcement must be met by family day care homes required or choosing to be licensed (s. 402.313(13), F.S.). Family day care homes which are not required or do not choose to be licensed must register annually with the department pursuant to s. 402.313(1)(a), F.S., which requires the provision of the following information: name of the operator and home, address of the home, number of children being served, a plan for a substitute caregiver in an emergency, proof that the criminal background and employment history check were completed, proof that the required 30-hour training program was completed and competency test passed, and proof that the immunization records are maintained.

The Department of Children and Families is responsible for the licensure and enforcement of child care licensure standards, including those applied to family day care homes, unless a county has chosen to assume the child care licensing responsibility pursuant to s. 402.306, F.S.

Currently, seven counties have assumed this role. The Department of Children and Families reports that many parents prefer the setting and services provided by a family day care home because these homes are often closer to home or work, provide a more home-like environment, offer a consistent caregiver over a longer period of time, often have a lower child-to-staff ratio, and provide smaller group sizes. As of December 24, 2003, the department reports there were 5,096 licensed family day care homes and 2,863 registered family day care homes in Florida.

The ability of an individual to operate a family day care home out of his or her residence can be impeded by either zoning restrictions or covenants of the homeowners' association that consider the family day care home a business. Current Florida law, however, requires that the operation of a family day care home be considered a valid residential use for municipal or county zoning regulations (ss. 125.0109 and 166.0445, F.S.), thus preventing zoning regulations from defining family day care homes as a business that could be prohibited from operating in an area zoned for residential use. These sections apply to family day care homes that are either licensed or registered with the Department of Children and Families and also prohibit the requirement of a special exemption, waiver, or fee in order to operate in an area zoned for residential use.

The deed restrictions or covenants of homeowners' associations can include restrictions which prevent a family day care home from operating. Chapter 720, F.S., sets forth the statutory framework for homeowner's associations. The "declaration of covenants" is defined by this chapter as the recorded written instrument of covenants that run with the land¹ and subjects the land to the jurisdiction and control of a homeowners' association (s. 720.301(4), F.S.). The declaration of covenants for many homeowners' associations includes a prohibition against conducting a business from the residence which is the predominant covenant or deed restriction preventing the operation of family day care homes. The Florida Family Child Care Home Association reports that this covenant or deed restriction has resulted in family day care homes having to close their programs. Two of these closures have been pursuant to court orders (Case No. 97-5668 in the circuit court for Leon County and Case No. 98-6879 in the circuit court for Pasco County).

III. Effect of Proposed Changes:

Senate Bill 2208 creates s. 402.31302, F.S., which stipulates that a licensed family day care home may not be prohibited by any deed restriction, covenant, or binding agreement that runs with the land from operating in a residential dwelling except under certain circumstances. A family day care home may not be directly prohibited by a deed restriction or covenant from operating nor may the deed restriction or covenant indirectly have the effect of prohibiting the family day care home from operating. The bill allows the deed restriction, covenant, or other binding agreement to prohibit a family day care home from operating in a residential dwelling if the prohibition is necessary for the preservation of the health, safety, and welfare of the other

¹ "covenant running with the land" is a promise made in a deed or implied by law that, because it relates to the land, binds the successor grantees indefinitely (Black's Law Dictionary, 7th Edition).

residents of the neighborhood. However, this prohibition must be applied on a case-by-case basis, and the party seeking to apply this prohibition has the burden to prove that the restriction is necessary for the health, safety, and welfare of the neighborhood residents. The bill also exempts from the provisions of this section and, thus, permits deed restrictions to prohibit family day care homes from operating in condominiums that meet the definition in s. 718.103, F.S., timeshare properties that meet the definition in s. 721.05, F.S., and cooperatives that meet the definition of s. 719.13, F.S. These are residential communities that are often comprised of retired individuals.

The bill provides legislative findings and intent for creating a public policy that eliminates the use of deed restrictions, covenants, and other binding agreements to prohibit the establishment and operation of licensed family day care homes. Specifically, the bill expresses the legislative intent of providing families with family day care in order to protect the children's health, safety, and welfare and to offer a child care option that is homelike and in neighborhood settings. The legislative findings set forth in the bill include that family day care homes increase the availability of care for siblings in the same program; offer children enhanced communication and learning experiences; meet the transportation, scheduling, financial, and emotional needs of many working parents; and provide an environment that closely resembles the families' homes. The bill further reiterates the exemption to local zoning regulations relative to residential use currently provided to family day care homes.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida and United States Constitutions prohibit the Legislature from enacting laws impairing the obligation of contracts (Fla. Const. Art. I, s. 10; U.S. Const. Art. I, s. 10); covenants running with the land are a form of a contractual obligation to which this prohibition would apply. While the courts have historically applied this restriction strictly, they have recognized the need to provide exemptions to the law when there is an overriding public necessity for the state to exercise its police powers [Park Benziger & Co. v. Southern Wine & Spirits, Inc., 391 So.2d 681 (Fla. 1980)]. This exception extends to laws that are reasonable and necessary to serve an important public purpose [Yellow Cab Co. v. Dade County, 412 So.2d 395 (Fla. 3rd DCA 1982)] and to include protecting the public's health, safety, or welfare [Khoury v. Carvel Homes South, Inc., 403 So.2d

1043 (Fla. 1st DCA 1981)]. Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts [Pomponio v. Claridge Pompano Condominium, Inc., 378 So.2d 774 (Fla. 1979)]. The bill sets forth legislative intent and findings to support a public policy of eliminating covenants and deed restrictions that are barriers to the establishment and operation of family day care homes. Florida law also provides for three existing limitations to covenants: s. 163.04, F.S., a covenant may not prohibit solar collectors or other energy devices; ss. 125.568, 166.048, and 720.3075, F.S., a covenant may not prohibit the owner from implementing “Florida-friendly landscape” or “Xeriscape” on his or her land; and s. 720.3075, F.S., a declaration of covenants may not preclude property owners from displaying a United States flag.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Families reports that there is no fiscal impact with this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The language of the bill prohibits the application of covenants and deed restrictions that would prevent the operation of a family day care home in a manner that is broader than those restricting the use of the dwelling to residential purposes or prohibiting a business. For example, the covenant or deed restriction of a neighborhood may apply limitations on fencing that may be contrary to the family day care licensing requirements which currently require a four foot high fence if the home is on a public road or a lake, canal, or other water hazard. With this bill, such deed restrictions and covenants would not be applied to a family day care home if the requirement or restriction could prevent the operation of the family day care home.

There is a presumption that owners purchasing the land covered by the deed restrictions or covenants know and understand the restrictions and requirements imposed by the homeowners' association. It could be argued that some individuals choose certain communities because of the particular restrictions imposed, and elimination of certain restrictions may lead to conditions they were purposefully avoiding, such as having a business next door. The Florida Association of

Family Child Care Homes has reported, however, that most people would have a hard time even identifying a family day care home in most neighborhoods.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 2208

Amendment No. _____



885086

#1

Senate

CHAMBER ACTION

House

SENATE COMMITTEE CHILDREN AND FAMILIES

DATE: 4/9/04TIME: 11:30 a.m.

Senator Wilson moved the following amendment:

Senate Amendment

On page 1, lines 17-23, delete those lines

and insert:

(1) The operation of a family day care home as defined in s. 402.302, and licensed under s. 402.313, in a residential dwelling shall constitute a valid residential use for the purpose of any deed restriction, covenant, or other similar binding agreement running with the land. No deed restrictions, covenants, or similar binding agreements running with the land shall consider the operation of a family day care home a business, commercial activity, or trade, nor prohibit the use of a residential dwelling as a family day care home because it is considered a business, commercial activity, or trade, unless prohibiting the use is necessary for the preservation of the health, safety, and welfare of the other residents in the neighborhood.

Bill No. SB 2208Amendment No. 

892958

CHAMBER ACTION

SenateHouse

#2

SENATE COMMITTEE CHILDREN AND FAMILIES

DATE: 4/9/04TIME: 11:30 a m

Senator Wilson moved the following amendment:

Senate AmendmentOn page 2, line 2, after "section."

insert:

Communities, as defined in s. 720.301, that include in their
declaration of covenants a prohibition against children
residing in the community, are also exempt from the provisions
of this section.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2730

SPONSOR: Senator Smith

SUBJECT: License Plates

DATE: March 22, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Favorable
2.	Collins <i>SPC</i>	Whiddon <i>W</i>	CF	
3.			FT	
4.			ATD	
5.			AP	
6.				

I. Summary:

The bill directs the Department of Highway Safety and Motor Vehicles (DHSMV) to issue a Kids Deserve Justice specialty license plate. In addition to applicable motor vehicle registration taxes and fees, a \$25 annual use fee will be charged for this new specialty license plate. The annual use fees will be distributed to the Florida Bar Foundation, Inc., to operate a grant award process to fund children's legal services programs, which shall include legal services programs, and programs to obtain: federal benefits for disabled children; testing and services required by law for learning disabled children; and permanent placement for abused and neglected children. In addition, the Florida Bar Foundation, Inc., is authorized to retain the first annual use fee proceeds to offset its costs in developing the plate.

According to the DHSMV, the Florida Bar Foundation, Inc., has completed all statutory requirements for eligibility to seek Legislative approval of its specialty license plate concept. The organization timely submitted the description of the plate, the scientific sample survey results, and the marketing strategy to DHSMV; however, the \$60,000 application fee was paid late.

This bill substantially amends ss. 320.08056 and 320.08058 of the Florida Statutes.

II. Present Situation:

The Florida Legislature created the first specialty license plates in 1986, one commemorating the seven astronauts who died when the space shuttle Challenger exploded after lift-off, and one for each of the nine universities then in the State university system. Since then, the Legislature has authorized 78 more specialty license plates.

Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to an organization or organization in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Section 320.08053, F.S., provides an organization seeking authorization to establish a specialty license plate must submit the following:

- A request for the particular license plate with a description of the proposed plate in general terms.
- The results of a scientific sample survey of Florida motor vehicle owners that indicates at least 15,000 motor vehicle owners intend to purchase the proposed specialty license plate at the increased costs.
- An application fee, not to exceed \$60,000, to defray DHSMV's cost for reviewing the application and developing the specialty license plate, if authorized.
- A marketing strategy outlining both the short and long term marketing plans and a financial analysis outlining the anticipated revenue and the planned expenditures of the requested specialty license plate.

The required documentation and fees must be submitted at least 90 days before the convening of the next regular session of the Florida Legislature. If a specialty license plate is approved by law, the organization must submit a proposed art design for the specialty plate to DHSMV no later than 60 days after the act becomes a law. If the specialty license plate is not approved by the Legislature, then the application fee will be refunded to the requesting organization.

Section 320.08056, F.S., provides DHSMV is responsible for developing the specialty license plates and must begin production and distribution within one year after approval of the specialty license plate by the Legislature. Specialty license plates must bear the design required by law for the appropriate specialty plate, and the designs and colors must be approved by DHSMV. In addition, the specialty license plate must bear the imprint of numerals from 1 to 999, inclusive, capital letters "A" through "Z", or a combination thereof. The word "Florida" must appear at either the top or the bottom of the plate, depending upon the design and may bear an appropriate slogan.

The DHSMV is authorized to annually retain the first proceeds derived from the annual use fees collected in an amount sufficient to defray each specialty plates pro rata share of DHSMV's costs directly related to issuing the specialty license plate.

The DHSMV must discontinue the issuance of an approved specialty plate if less than eight thousands plates (including annual renewals) are issued by the end of the fifth year or during any subsequent 5-year period. The DHSMV is authorized to discontinue the issuance and distribution

of specialty plates if the organization no longer exists or if the organization has stopped providing services authorized to be funded.

Annual use fees or any interest earned from those fees may not be used for commercial or for-profit activities, or for general administrative expenses (except as specifically authorized or to pay the cost of the audit or report required to ensure the proceeds are used as authorized).

Section 320.08058, F.S., lists the approved specialty license plates and specifies funding requirements.

Section 320.08062, F.S., requires all organizations receiving annual use fee proceeds from DHSMV to be responsible for ensuring proceeds are used in accordance with ss. 320.08056 and 320.08058, F.S. Each organization is either subject to an audit or is required to annually attest, under penalties of perjury, that such proceeds were used correctly.

The Legislature has authorized 88 specialty license plates to date. Sales of specialty license plates generated more than \$24 million in annual use fee revenues in 2002, and more than \$24.5 million in 2003. Since the program's inception in 1986, the DHSMV has collected annual use fees totaling more than \$225 million.

III. Effect of Proposed Changes:

The bill directs the DHSMV to issue a Kids Deserve Justice specialty license plate. In addition to applicable motor vehicle registration taxes and fees, a \$25 annual use fee will be charged for this new specialty license plate. The annual use fees will be distributed to the Florida Bar Foundation, Inc., to operate a grant award process to fund children's legal services programs, which shall include legal services programs, and programs to obtain: federal benefits for disabled children; testing and services required by law for learning disabled children; and permanent placement for abused and neglected children. In addition, the Florida Bar Foundation, Inc., is authorized to retain the first annual use fee proceeds to offset its costs in developing the plate.

According to the DHSMV, the Florida Bar Foundation, Inc., has completed all statutory requirements for eligibility to seek Legislative approval of its specialty license plate concept. The organization timely submitted the description of the plate, the scientific sample survey results, and the marketing strategy to DHSMV; however, the \$60,000 application fee was paid late.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who apply for the Kids Deserve Justice license plate would have to pay \$25 for the annual use fees in addition to applicable motor vehicle registration taxes and fees.

C. Government Sector Impact:

Current law provides an application fee, not to exceed \$60,000, be paid to DHSMV to defray the administrative costs of reviewing and developing the new specialty license plate. The DHSMV has indicated \$60,000 has been collected from the applicant to defray these costs; however the fee was received late. This fee will be refunded if the license plate is not approved by the Legislature.

The DHSMV estimates administrative and design costs to be approximately \$60,000 per specialty license plate authorized. Any additional cost of issuing the license plate will be retained from the first proceeds derived from the annual use fees as provided in s. 320.08056(7), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.



Senate Committee On
CHILDREN AND FAMILIES

***SUPPLEMENTAL
AMENDMENT PACKET***

Evelyn J. Lynn, Chair
Frederica S. Wilson, Vice Chair

Meeting Packet

Tuesday, April 13, 2004

2:45 p.m. – 4:45 p.m.

37 Senate Office Building

***(Please bring this packet to the committee meeting.
Duplicate materials will not be available.)***

Bill No. Proposed CS for SB 1280

Amendment No. _____



634292

CHAMBER ACTION

SenateHouse.
.
.
.
.
.

SENATE COMMITTEE CHILDREN AND FAMILIES

DATE: 4-13-04TIME: 9:00 a.m.

Senator Lynn moved the following amendment:

Senate Amendment (with title amendment)

On page 91, between lines 14 and 15,

insert:

Section 47. (1) In the Department of Children and Family Services' Economic Self-Sufficiency Services Program Office, the department may provide its eligibility determination functions either with department staff or through contract with one or more private vendors, with the following restrictions:

(a) With the exception of information technology, a contract may not include a geographic area larger than a combined seven districts or combined three zones without the prior approval of the Legislative Budget Commission;

(b) All jobs made available through any contract must be located within the United States, with preference given to contractors whose jobs will be provided to residents of this state; and

(c) Department employees must provide the functions in

Bill No. Proposed CS for SB 1280

Amendment No. _____



634292

1 at least two districts or one zone.

2 (2) This section shall take effect upon this act
3 becoming a law.

4
5 (Redesignate subsequent sections.)
6
7

8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 On page 1, line 2, through

11 page 4, line 2, delete those lines
12

13 and insert:

14 An act relating to the Department of Children
15 and Family Services; amending s. 20.19, F.S.;
16 removing the developmental disabilities program
17 from the Department of Children and Family
18 Services; creating s. 20.197, F.S.;
19 establishing the Agency for Persons with
20 Disabilities for the purpose of providing
21 services to persons with developmental
22 disabilities, including institutional services;
23 directing the agency to execute interagency
24 agreements with the Agency for Health Care
25 Administration for the financial management of
26 the Medicaid waivers and the Department of
27 Children and Family Services for administrative
28 support; amending s. 393.063, F.S.; updating
29 definitions and deleting obsolete definitions;
30 amending s. 393.064, F.S.; deleting
31 requirements that the agency's legislative

Bill No. Proposed CS for SB 1280

Amendment No. _____



634292

1 budget request include funding for prevention;
2 amending s. 393.0655, F.S.; requiring Level 2
3 screening for specified service providers;
4 amending s. 393.066, F.S.; removing requirement
5 that services be administered and approved by
6 the districts; modifying a requirement to
7 provide certain services; deleting a
8 requirement for a 5-year plan relating to
9 community-based services; adding a requirement
10 to assist clients in gaining employment;
11 repealing obsolete requirement authorizing the
12 state to lease or construct residential
13 facilities; deleting authorization to adopt
14 rules ensuring compliance with federal rules;
15 amending s. 393.0661, F.S.; deleting an
16 obsolete provision; modifying provisions
17 relating to an assessment instrument; adding
18 requirements for adoption of rate
19 methodologies; amending s. 393.068, F.S.;
20 making service provision subject to available
21 resources; updating list of services to be
22 provided; deleting provision referring to
23 5-year plans; amending s. 393.0695, F.S.;
24 requiring in-home subsidy amounts to be
25 reassessed annually; amending s. 393.11, F.S.;
26 deleting provisions referring to districts,
27 department programs, and the nonexistent
28 Department of Labor and Employment Security;
29 amending s. 393.13, F.S.; deleting obsolete
30 provisions; adding legislative intent relating
31 to reducing the use of sheltered workshops;

Bill No. Proposed CS for SB 1280

Amendment No. ____



634292

1 amending s. 393.17, F.S.; authorizing the
2 agency to contract for the certification of
3 behavioral analysts; deleting provisions
4 relating to a certification program and
5 provisions allowing fees; amending s. 393.22,
6 F.S.; deleting prohibition preventing transfer
7 of funds and ensuring financial commitment for
8 specified developmental conditions; amending s.
9 393.502, F.S.; removing reference to districts;
10 deleting a provision permitting appointment of
11 family care council members if the Governor
12 does not act; amending ss. 408.301, 408.302,
13 F.S.; amending legislative intent to add the
14 Agency for Persons with Disabilities and the
15 Department of Elderly Affairs as agencies that
16 the Agency for Health Care Administration must
17 enter into interagency agreement with regarding
18 persons with special needs; amending s.
19 409.906, F.S.; clarifying powers of the Agency
20 for Health Care Administration with respect to
21 limiting coverage for certain services;
22 repealing s. 393.14, F.S.; requiring a
23 multiyear plan; repealing s. 393.165, F.S.,
24 relating to ICF/DDs; repealing s. 393.166,
25 F.S., relating to homes for special services;
26 repealing s. 393.505, F.S., relating to
27 comprehensive day treatment service projects;
28 transferring programs and institutions relating
29 to developmental disabilities from the
30 Department of Children and Family Services to
31 the Agency for Persons with Disabilities;

Bill No. Proposed CS for SB 1280

Amendment No. _____



634292

1 providing duties of those agencies as well as
2 the Department of Management Services;
3 providing for substitution of parties in
4 administrative and judicial proceedings;
5 providing duties of the Office of Program
6 Policy Analysis and Government Accountability;
7 providing for a report; amending ss. 92.53,
8 397.405, 400.464, 419.001, 914.16, 914.17,
9 918.16, 943.0585, 943.059, F.S.; conforming
10 cross-references; amending ss. 393.0641,
11 393.065, 393.0651, 393.067, 393.0673, 393.0675,
12 393.0678, 393.071, 393.075, 393.115, 393.12,
13 393.125, 393.14, 393.15, 393.501, 393.503,
14 393.506, F.S.; conforming to the changes made
15 by the act; authorizing the Department of
16 Children and Family Services' Economic
17 Self-Sufficiency Services Program Office to
18 provide the eligibility determination function
19 through department staff or through contract;
20 providing restrictions; providing an effective
21 date.
22
23
24
25
26
27
28
29
30
31

Bill No. *Proposed CS for SB 1280*

Amendment No. _____

Senate

CHAMBER ACTION

House

•
•
•
•
•
•
•

SENATE COMMITTEE CHILDREN AND FAMILIES

DATE: 4-13-04

TIME: 9:004 m

Senator Lynn moved the following amendment:

Senate Amendment

On page 23, lines 19-21, delete those lines

and insert: any other person, including volunteers, who provides care or services, who has access to a client's living areas, or who has access to a client's funds or personal property.

Bill No. SB 2208

Amendment No. _____



521644

#3

Senate

CHAMBER ACTION

House.
.
.
.
.
.

SENATE COMMITTEE CHILDREN AND FAMILIES

DATE: 4-13-04TIME: 9:30 a m

Senator Lynn moved the following amendment:

Senate Amendment

In title, on page 1, line 7, after "home"

insert:

because it is considered a business